Rights of Muslim Women

A Critique of the Objections

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DEDICATION

With profound respect and reverence, I seek to dedicate these pages to my late illustrious mother, under whose feet rests my bliss, and whose supplications and good wishes have blessed me all along in my life and I hope they will continue to be the greatest asset of my life, in future also.

It is a profound grief that I lost my mother's blissful patronage on June 18, 1991. I believe that the realm of Allah's mercy is her happy home now. May Allah elevate her ranks in the Akhirah. Ameen!

February 24, 2004 ***JALALUDDIN***

A Note on Revision

It was a stroke of good fortune that Maulana Sayyid Jalaluddin Umari found an ideal translator in janab Sharif Ahmed Khan Sahib who has a way with words, whose expression is power-packed, and who as a translator compels admiration. Consequently, rendering the work of revision was effortlessly easy. Apart from printing errors, which had perforce to be corrected, I touched the language very sparingly and reluctantly to bring it still closer to the text and the idiom. I hope the author as well as the translator will appreciate my effort.

The book has been extremely popular and has already run into five editions in Urdu language. The author has now extensively revised it and has added a lot of new material. It is expected that these additions have enhanced the value of this work. The present translation is based on this revised and extended version of the book. I have benefited from the translation done by Janab Sharif Ahmad khan (of the earlier version).

I have translated additional sections in this new and enlarged version.

Usman Muhammad Iqbal

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FOREWORD

Among the Islamic themes attended to and widely discussed among learned intellectual circles, woman's rights enjoy great significance from various angles. Scholars from literary ranks level a number of objections to the rights of women in Islam. In the present work, we begin with a brief discussion on the rights that Islam grants to Muslim women, and in the later part, we analyze some of the more prominent objections levelled against these rights. This is not an exhaustive study of this issue, and therefore, does not cover all its aspects. Detailed discussions on some of these objections are present in my other articles and books on this subject. Here we touch upon them in brevity.[1]

The present discussion, however, focuses more on remedying confusions and misunderstandings within the ambit of these objections.

In dealing with all these issues, I purposely avoided a polemical style as it closes the doors on receptivity and appreciative understanding. Where a writer's own passions and feelings precede core facts and a learned and unbiased analysis goes into the background, the discussion ceases to make an impression. Instead, therefore, we present answers to the lurking doubts and confusing misunderstandings in the light of the Qur'an,

1. The following books on Social Problems, from my pen, have ben published:
   1. Aurat Islami Ma'ashere-Mein (Urdu with Bangali translation).
   2. Aurat aur Islam (Urdu with English and Hindi translation).
   3. Islam ka Aaily Nizam (Urdu)
   4. Musalman Khawateen Ki Zimme-dariyan (Urdu with English translation).
   5. Qur'an ka Nezaam-e-Khandan
   6. Bachche aur Islam (Urdu with Hindi translation).

Two other voluminous books are under preparation:

1. Khandan-Islami ta'leemat Mein.
2. Walidain ke Huqooq aur Fara'iz (Urdu).

Selected items from them have found place in Zindagi, Urdu Monthly, Rampur; Al Furqan, Lucknow and Burhan, Delhi.

Invoking Allah for the early completion of these two books.

Hadith and Fiqh. There is no assertion without authoritative references. I have abstained from unnecessary and boring details of references. Generally, the reference to the works forms part of the text. Other details like the author, the press and the particular edition are present at the end of the book.

Since the objections relating to the rights of a Muslim woman are under the influence of Western thought, we present a brief analysis of the Western concept of woman's liberation in the beginning, which will bring to light glaring facts; notwithstanding the immediate dazzling effect, it has its own dark alleys. It would not be advisable for us to emulate their pattern.

People, whose anti-Islamic passion and determined opposition is a well-known fact, most probably, initiated the criticism of Islamic systems and picking holes particularly in its social order. Unfortunately, however, many Muslim intellectuals too have of late joined cause with them. These individuals, even if deemed learned and given to research, and in spite of their lofty position in their own circles, they only are a negligible minority in the Muslim community. They are the main addressee of this book. Along with them, the author addresses the generality of Muslims too. The writer being one of them does not claim himself to be free from their common infirmities.

The general run of the Muslim community does pay lip service to their belief and faith, and would not deny the rights and privileges that Allah, the Exalted conferred on Muslim women, and as such, our obligation is to fulfil them. They are fully conscious of the fact that any abrogation, any minor amendment in these rights is a direct interference in these divine injunctions. They also appear to be fully prepared to maintain the divine law relating to woman's rights in its proper form and ready to make sacrifices, if necessary, towards this end. However, it is different in practical life. They do not live up to them in society. Rather, they violate it at every step where their application comes in. A father fails in his duty to mete out the rights of his own daughters. There is

disregard for their education or, at least, parents do not pursue it so assiduously as that of their brothers. They also suffer in the matter of receiving parental attention, care and favours in other walks of life. Under various pretexts, she remains out of the parental inheritance. The behaviour pattern of the children vis-à-vis the parents changes for the worse, particularly so after marriage. The society denies proper treatment, due respect, and regard. They do not attend to their legal rights, and in case of lack of their own means, they (the parents) pass their days in chill penury. A wife does not enjoy the conjugal regard and affection, which is her undeniable right. They treat her like a maidservant in her husband's house and deprive her of so many due rights. However, they take serious notice of her minor faults, and deal with her sternly. Trifles become excuses for divorce. In so far as the payment of dower is concerned, it has through a long period of ignorance and moral turpitude, come to be erroneously believed that it falls due only in case of divorce and without it there is no need to pay her anything. This is the usual pattern adopted in their dealings with Muslim women whose rights Islam enjoins on men, and with concerning whom Islam teaches us to be generous and kind. Islam has permitted women, (of course within certain prescribed limits of its own) to take to economic effort. It also aims at advancing her in education. She has been allowed to undertake, in her own right, call to faith and preaching, propagation of religious teachings, criticism, calling to account and political and social services. However, in the practical life of the Muslim community she is nowhere in the picture, and her total absence is apparent even to the casual observer. How can the world at large accept our repeated claims and vociferous assertions that Islam has granted the Muslim woman all the rights that she could desire and much more than any other religion or social order can claim to have given her, and provided all the opportunities for progress and a life of honour, dignity and prosperity?

If the Muslim society honours all the rights that Islam confers on a woman and honestly puts them into practice, most probably, the problems with reference to which people censure the entire gamut of the Islamic law, seek its amendment even total abrogation (in favour of the existing laws based on the Western Jahiliyah or un-Islamic) would cease to exist. If Muslims themselves do not meet their obligations to their women, how can they assert with authority that these rights are inviolable and revered and that they cannot tolerate any interference with them? Their shortcomings in this behalf shall become an argument in favour of its sanctity as a false claim, which must end. Besides bringing to the fore that at least in practical life, there is hardly any more need for them.

It should be clearly borne in mind that if one does not provide her in right earnest, the rights conferred on her by Islam, she can seek redress under the un-Islamic Laws. (Unfortunately, it has already started on a small scale). She herself will be obsessed with the idea that the Law, which is defunct in its beneficence must change. This is not mere conjecture. There is factual evidence in support of it. It is, therefore, incumbent on the Muslim society to return to Islam and make amends for the past criminal negligence, by binding itself to the Islamic system as a whole.

Lastly, the author submits that this is a humble effort and there may be many pitfalls therein. There is no scarcity of persons having much greater insight in the entire problem. The author earnestly requests them to point out any fallacy in this analysis, and he will gratefully accept suggestions and make amendments as necessary.

I presently invoke Allah that this book may serve the end in view, may benefit the servants of Allah and may prove a source of reward Here and the Hereafter for the author. Amen!

Jalaluddin Umari, 21, February 1986

PART I

WESTERN CONCEPT OF WOMAN'S LIBERATION AND RIGHTS OF MUSLIM WOMAN

Chapter 1

The Western Concept of Woman's Liberation and its Consequences

During the course of history woman has long been a victim of oppression. Men exploited her in Greece, Rome (Byzantine empire), Egypt, Iraq, India, China, and Arabia. She was sold and purchased in market places and fairs, and received treatment worse than animals. For a long time, a debate continued on the issue whether a woman had a soul. The Arabs regarded her very existence as a disgrace, and some cruel and very insensitive persons used to bury their daughters alive at birth or soon after. In India, people consigned the widow to flames at the funeral pyre of her dead husband. The religious faiths given to asceticism regarded her as the source of sin whose doors led to transgression, and considered contact with her an impediment in spiritual development and salvation. In most civilizations of the world, she enjoyed no status in society. She was contemptible and despised in their estimate. She had no social and political rights. She could not exercise her own free will in any financial deal. She was under the tutelage of her father, later under the oppressive rule of the tyrant of a husband and lastly under the patronising care of the male offspring.. The long-standing conventions did not permit her to challenge their authority and she had no course of justice to appeal to escape from tyranny and excesses - not even a breath of complaint.

Undoubtedly, she has at times been in the seat of authority in some parts of the world. In addition, it is on record in the world history that empires and governments have danced to her tune, even tantrums, and it has been a common occurrence that she has had ascendancy in familial, tribal, and monarchical activities. In

some uncivilized tribes, she had enjoyed superiority and rule and there are remnants of it still present. Yet as the female gender of the human species, there was little change in her status and she suffered in silence through the course of history and remained deprived of her due rights as usual.

Islam took her out of this whirlpool of oppression and tyranny, meted out justice to her, granting her due rights, elevating her position in honour and dignity and teaching the society to respect her. However, the Western nations that failed to come under the benign shade of Islam remained deprived of its blessings and healthy effects. In their societies woman's rights and privileges remained trodden under the feet of the dominant sex and she, poor thing, did put up with all that uncomplaining. In the modern age (even long after Renaissance), the reaction to the changes in the social fabric of the society and the concept of the equality of the sexes came to the fore. People put forth arguments in support of this claim and made attempts to prove that in spite of gender specific differences between the two sexes, woman is not inferior to man. Both stand on an equal footing in all respects and this position does not permit any discrimination whatsoever. She can do everything that a man is capable of, and can hold any office of responsibility placed under her charge. She is free from all shackles and restrictions and man's ascendancy over her must cease, and as such, she must enjoy all the rights and privileges that have formerly been the monopoly of the stronger sex.

It was a very pleasing and flattering concept for women, and they grabbed this offer of the society as if they have regained their lost place in heavens. Gradually, she became the partner of man on equal terms in economic, social, and cultural affairs. Soon she began striving in factories, offices, and colleges, shoulder to shoulder with her male counterpart, nay, taking part freely in the outdoor activities in parks, clubs, houses, and picnic spots as well as in domestic circles with men. Her presence emerged essential in every occupation, and without her, life appeared colourless and

drab. The female sex considered it a step towards her progress and exaltation and appeared impatiently eager to take steps one after the other on the road to success and elation. Its apparent glamour dazzled her, but she failed to see through its hidden evils and detriment.

The concept of woman's liberation put forth by the West was beneficial to her in some respects, but harmful as adjudged from other angles. If she emancipated herself from the tyranny of man on the one side, there was no consideration for her physical faculties, capabilities, temperament, and psychological make-up in this (man's) 'benevolence' to her. This change had come as a strong reaction against man's tyranny and injustice to the women and had, hidden in it, all those sources of intemperance and excesses that are usually the result of such violent and uncontrolled reactions.

This unbridled freedom of woman has given the entire life-pattern of the West a dangerously faulty orientation and has created conditions of imbalance giving rise to terrible consequences. At this juncture, Islam comes to our rescue and guides us in the right direction. It provides assurance of the fundamental rights of woman and her all-round progress and development as well as provides safeguards against the devastating and disgraceful consequences with which the West faces at present. Below, we mention some of these social and political consequences.

Sexual Anarchy

Because of free mixing of sexes, with temerity, in every sphere of life, the trend of profligacy and dissoluteness came into existence and developed leading to spread of adultery and fornication. This gave rise to a shameless and disgraceful culture, which ultimately left no room for morality and shocked the sense of modesty and noble-mindedness, both of which strangulated

and done away with.

History bears testimony to the fact that, dragging woman out of her citadel, her home, to make her the centre of attraction in social functions and other public gatherings generated unrestrained dissipation of excited passions. The resulting stink of moral turpitude, normally unbearable even behind closed doors was now out in the open, vitiating the healthy atmosphere. Even the most sacred and strictly prohibited relations were no more sacred and inviolable, and desecrated with impunity. Not to say of ordinary mortals, they implicated even their gods and goddesses, and tarnished their images, presenting them as emblems of debauchery. The shameful and ignoble conduct ascribed to them mortified even their own humble devotees. Prostitutes and other women of ill repute attained an exalted position in their corrupt society, which their chaste and modest counterparts in their homes had never contemplated. Art and culture came to the aid of degenerate sex and unrestrained passions and beautifully explained them away as the most natural phenomenon of the human nature. Female charms filled public view through paintings and photographs in the nude, and the sculptors fashioned stark naked statues leaving no details of the charms of the female figure in their zeal of promoting their own erotic art. Their degenerate sex-ridden art did not spare even their goddesses. Man revelled in the charms of the female form, leaving nothing for imagination, and exploiting her no less enchanting voice to attract them towards promiscuity, immodesty, and sin. Fiction, drama, poetry and literature in various other forms depicted sex in all its lurid and shameful details and the accompanying sensations and passions. Women had become toys in the hands of man to play with as they were pleased and as much as they liked. She finally came to mean to him an outlet for the dissipation of over-wrought passions in an atmosphere surcharged with eroticism. Culture and civilization became an ignoble record of sex activities and its manifold manifestations so that they seemed to revolve round them alone.

The evil effects of unbridled sex brought the one time mighty cultures and civilizations to decadence, decay and annihilation. Rome (the Byzantine empire as called by the Arabs), Egypt, Persia and Babylonia followed the same path of decline and Babylonia followed the same path of decline and death, their one-time glory and pomp of power notwithstanding. Our modern civilization too is rushing headlong at a dangerous pace to the same sad end. Probably the time is not far off when the apparently mighty and glorious edifice will collapse tottering down and crumble to dust (without any Gibbon to lament its fall), and from its ashes a more healthy culture would emerge.

Breakdown of the Family System

The familial order remains intact due to the presence of a woman to manage its affairs smoothly. However, whenever her activities found fields in the world outside and they occupied most of her time, the familial system broke down. Whatever she gained in the world outside, she had to pay dearly for it in the form of destruction of her home. Family is the foundation stone of society, and when displaced, the entire edifice became topsy-turvy. Woman was once a source of comfort and solace to man, but now no longer so. The deep-rooted conjugal relationship of love that bound them together to face the vicissitudes of life was gone, creating a vacuum, and left each one alone to fend for him/her. The relationship of the parents and the offspring weakened gradually. Parents, generally the centre of affection and love for the children, no longer hold this privilege, and (as useless members of society and the families) resigned to the nursing homes. The offspring is the sole support of the parents in their old age. Gone was this support for them to lean on, and they were compelled by the changed circumstances and estranged relationships to pass their last days in poor houses or old age asylums, forlorn and broken-hearted. Moreover, it did not end there. All other relationships that depended on the survival of the

family also disappeared with it, leading man woefully deprived of peace and blessings, which only the family circle can provide. Breaking down of the family is no small issue. It is such a heavy loss that no society can put up with for long. Finally, this breaking down of the family ruined the society too. No edifice can exist without a foundation.

Islam regards a well-knit family essential for the survival of the society, since it rests on that foundation alone. The strength and firmness of the family is the firmness of the society and vice versa. Islam provides very strong and firm foundations for the family and guards it against those factors that would weaken its fabric or be its undoing. It has established an entire system for it and furnished detailed information with certain limits and regulations as necessary safeguards. It lays great stress on keeping this system and organisation intact and vigilantly guarding the limits prescribed by Allah. In this set-up, woman has prime importance. She plays an important role in its smooth and regular functioning. She has her rights and privileges as well as her obligations in it. If she were to detach herself from this organisation and fail to meet her responsibilities, not just squarely but devotedly, it will collapse before long. It can last only as long as the woman keeps striving hard for its maintenance and her attention remains centred on it alone.

Lack of Equilibrium in Rights and Obligations

A disproportion in the rights and obligations of woman emerged and the usual balance and moderation (guaranteeing proper functioning of a happy home) departed. Nature brings her up and develops her to take upon herself the onerous burden of becoming a mother to nurse and bring up human species in her loving lap. Nature, therefore, also provides her passions and feelings, powers and capabilities called for in this difficult job of great care and responsibility. That is why she has an inborn strong motive to meet this natural demand. Becoming a mother and

promoting a human generation is not a casual and momentary pastime but a long drawn and painstaking job, having its toilsome stages like pregnancy, delivery, breast-feeding, upbringing of the child and its education and training. In this tiring function of hers, man gives her a helping hand in some phases and also cooperates with her, indirectly though, but directly he can neither bear her burden nor does he do so in practical life. The burden has to be borne by woman alone, which takes the greater part of her energies and capabilities. Now, if she is burdened with all those political, social, and economic responsibilities also, which is entirely man's sphere of activities over and above those of running a household and managing the family affairs, it would be an excess and great injustice. It may become justifiable only in case she is relieved of the burden which nature has imposed on her, and developed her accordingly in a peculiar manner. But, as long as a woman remains a woman, and her pure and unsullied sentiments and her best capabilities are in demand for the survival of the human race through offspring, its growth and development and upbringing, this burden shall be too much for her to bear. One can neither take it away from her through any artifice, nor find a proper substitute to it.

On this count, Islam presents a moderate and well-balanced view as a solution of the problem. It confers on woman all those economic, political, and social rights granted to man. However, it keeps her out of certain responsibilities, which are alien to her temperament physical build, as also any additional burden with which she cannot squarely meet her natural responsibilities. An example may be helpful in the comprehension of the issue under discussion. The head of an Islamic state can only be male and the defence of the country is the business of men only. Although, Islam does not burden her with these exclusively male responsibilities, she enjoys all other political rights. She can express her opinion in politics or offer suggestions on political issues. She has the right of criticism and reckoning (calling to

account). She can point out the mistake of any office-bearer, even the head of the Islamic state publicly. No one can put any form of checks or bars on this right of hers. Let us take another example. She has no economic responsibilities but has the right to undertake economic enterprises within the limits prescribed by Islam.

Owing to the responsibilities imposed by Islam on man, it has conferred on him more rights to enable him to meet them easily. However, perfect justice has been kept in view here too, giving due regard that this does not spell injustice to woman. For this purpose, Islam has put very stringent checks on man to ascertain safety of woman's rights. In a family, man is the custodian and guardian. However, this position does not give him a free hand to curtail woman's rights and privileges or be guilty of excesses in any other form. Whenever he oversteps his limits of authority, the Islamic law will seize and punish him as required. Even the head of the state has no right to lay his hand upon her life, property, honour, and dignity and her other individual and collective rights. For any breach of law in this regard, he be accountable like any other citizen of the land.

Erosion of Sympathy for Women

As the last word, one must admit that man has undoubtedly been guilty of great excesses in his dealings with woman. Nonetheless, there is also in him, a natural passion of sympathy and love for her. Islam also stirs up that passion in him and nurtures it, induces him to not only to meet his obligations to her for fulfilment of her rights, but also to be sympathetic to her with benevolence in his attitude, for she deserves it. This passion has a fundamental importance in this mutual relationship of man and woman. In the present age, the struggle for rights between man and woman has harmed this passion and it is half-dead. It appears, at times that the passion is dead. To the woman it has been a great loss. For, law alone, however perfect in its

effectiveness and impressed upon men's minds with great force, cannot solve the problems. That is why notwithstanding persistent claims of equality between man and woman it is nowhere visible in the practical life of even its zealous protagonists. She does not fully enjoy the social rights conferred on her by law, and in certain situations, she is at the last limit of suffering tyranny and excesses. She is a market commodity sold and purchased to gratify the lust of man. Men invade in her life and property and her honour and dignity are in great peril. Her chastity and modesty too are at stake plundered unhesitatingly. It appears as if it is becoming increasingly difficult for her to defend from the everyday changing pattern of attacks on her at every step.

The bare fact is that even if there is recognition of certain rights for a weak party, it is not easy for it to have them honoured. Woman cannot wrest from man the rights in her fight for them. She can succeed only in case the man is willing to grant them to her. Towards that end sympathy for her and love of man are essential, whereby he may come to regard oppression and tyranny to her a serious crime, a heinous sin. Islam has achieved unparalleled success in this behalf. And whenever, this experiment in the history of mankind shall be repeated, human society shall once again witness the beautiful spring after a dismal and devastating autumn, as the world witnessed it earlier in the midst of deplorable conditions similar to our own or even worse.

Chapter 2

Rights of Muslim Women

The general observation is that a weak person has to strive hard and struggle against the opponents for securing his or her rights. Without which, it is not only difficult to secure, rather get them even recognized. Modern society recognized some of the basic rights after tiring debates and discussions, disputes and altercations and violent protests (the Suffragist Movement). Modern age considers this recognition and grant of woman's rights as its boon, whereas, the same is a blessing of Islam conferred on her (without her asking for it). To begin with, Islam gave her those rights, which she the world denied her earlier and she was silently suffering long because of this deprivation. Islam did not confer these rights on her in response to her demand or protests or promotion and representations on her behalf. Rather, it provided them as her natural rights, and she ought to have been enjoying them. Islam was under no compulsion to confer them on her, but it granted these to her as she was the oppressed and aggrieved party and helping and supporting the aggrieved and the suffering, it regarded as binding on it.

We mention below some of the rights that Islam has granted to woman. Islam does not rest content with the sanction of rights in so many high-sounding legal terms, but through persuasion and admonition, it also creates a congenial milieu for their fulfilment.

The Right to Live

The woman was in no better condition in Arabia than in the rest of the world. Certain tribes of Arabia buried their daughters alive. Qur'an admonished them in very strong terms for this villainy and hardheartedness, granted her the right to live, and declared

that whoever lays hands on this right of hers will have to account for his felony. Qur'an says:

وَاِذَا الْمَوْءٗدَةُ سُئِلَتْ ۝ بِاَیِّ ذَنْۢبٍ قُتِلَتْ ۝ (التکویر:۸،۹)

When the female (infant) buried alive is questioned for what crime she was killed; - Al Qur'an LXXXI: 8-9

On the one hand, Islam threatens the perpetrators of the heinous crime of taking the life of the innocent girls of the Hell-fire, and on the other, it gives glad tiding to those abstaining from this oppression, refraining from gender discrimination, and treating them on an equal footing with the sons of entry to heaven. Abdullah Ibn Abbas reports the Prophet S.A.W. to have said:

من كانت لـه انثى فلم يئـدها ولم يهنـها ولم يؤثـر ولـده عليها يعنى الـذكور ادخلـه الله الجنة.

(ابوداؤد، کتاب الادب، باب فضل من عال یتامیٰ)

"Allah shall reward the Muslim with entry to heaven who neither buries his daughter alive, nor subjects her to an ignoble treatment, nor treated the son preferentially compared to her."

(Abu Da'ood, Kitab-ul Adab Babo Fazl-e- Man A'la Yatama)

Along with these moral backings, Islam also instructs them to respect the life of women like that of men. For any breach of this ordinance, grants her right to Qisas. Qisas means that the one oppressed or suffering excesses, has the right to seek recompense at parity, so much so that if some innocent person is murdered, his or her relatives have the right to retaliate and take the life of the murderer. This law covers both men and women. The Quran says:

وَكَتَبْنَا عَلَيْهِمْ فِيْهَآ اَنَّ النَّفْسَ بِالنَّفْسِ ۙ وَالْعَيْنَ بِالْعَيْنِ وَالْاَنْفَ بِالْاَنْفِ وَالْاُذُنَ بِالْاُذُنِ وَالسِّنَّ بِالسِّنِّ ۙ وَالْجُرُوْحَ قِصَاصٌ ؕ فَمَنْ تَصَدَّقَ بِهٖ فَهُوَ كَفَّارَةٌ لَّهٗ ؕ وَمَنْ لَّمْ يَحْكُمْ بِمَآ اَنْزَلَ اللّٰهُ فَاُولٰٓئِكَ هُمُ الظّٰلِمُوْنَ ۝ (المائدہ:۴۵)

"We ordained therein for them: "Life for life, eye for eye, nose for nose, ear for ear, tooth for tooth and wounds

equal for equal. But, if any one remits the retaliations by way of charity, it is an act of atonement for himself. And if any fail to judge by what Allah hath revealed, they are wrong-doers." - *Al-Qur'an V: 45*

Islam revived this law of Torah (Old Testament) and it became part of the Islamic Shari'ah. This law not only protected woman against tyranny, rather, put an end to all sorts of tyrannies and excesses against every weak individual and class and provided justice to them.(The blood money and Qisas-relating to woman has been discussed in one of the next chapters.)

The Right of Upbringing

According to the Islamic law, every child is born with the natural right of being provided with the necessities. Upbringing of children and their proper care is a lengthy and tedious job. It is noticeable that the extra loving care lavished on the boys is stinted or sparing in the case of girls. Islam branded this attitude as undesirable, inducing the parents particularly to her proper upkeep and loving care, declaring it as an act worthy of great reward. 'Ayeshah R.A.A. reports the Prophet s.a.w to have said:

من بلى من هٰذه البنات شيئا فاحسن اليهن كن له سترا من النار

(بخاری، کتاب الادب، باب رحمۃ الولد وتقبیلہ۔ مسلم، ابواب البر والصلۃ، باب فضل الاحسان الی البنات)

"Whoever is put to test with girls as offspring, and he treats them kindly, they will become a source of protecting him from hell." (Bukhari, Kitab-ul Adab, Babo Rahmatil-Walade wa Taqbeelehi. Muslim Abwab-ul-Birre was Silate, Babo Fazlil-Ehsane ilal Banate)

This tradition mentions 'Ehasan' in connection with the girls, which is a comprehensive word meaning, their upbringing, their education and training, kind treatment and loving care, all together.

Anas r.a.a reports the Prophet s.a.w. to have said:

من عال جاريتين حتى تبلغا جاء يوم القيامة انا وهو وضم اصابعه

(مسلم، ابواب البر والصلۃ، باب فضل الاحسان الی البنات)

"A person who brings up two daughters until they attain maturity, he and I will be like this on the Day of Reckoning, will be like this. And saying these words he brought his fingers together."

(Muslim, Abwab-ul-Birre was Silate, Babo Fazlil-Ehsane ilal Banate)

Now let us look at the legal aspect of the issue. According to the Islamic Shari'ah the support and upkeep of the offspring devolves on the father. Offspring includes both boys and girls (without any distinction). Therefore, he cannot deny any of them, their birthright (proper upbringing). Accordingly, we find in the Qur'an under the subject of breast-feeding the following injunction:

وَعَلَى الْمَوْلُوْدِ لَهُ رِزْقُهُنَّ وَ كِسْوَتُهُنَّ بِالْمَعْرُوْفِ (البقرہ:۲۳۳)

"And he (father of the child) shall bear the cost of their (mothers giving suck) food and clothing."

- Al Qur'an II:233

The jurists have furnished details of the ordainment. The erudites of the Hanafite School opine that the responsibility of support, care, education, and training in case of the boys is up to the age of majority, and there it ends, except that he is disadvantaged. However, the responsibility of upkeep of the female offspring shall remain liable even after her attaining majority, until she gets married and has a home of her own. Others are of the opinion that both father and mother must share this responsibility after the daughter attains majority. Two thirds is to be borne by the father and one-third by the mother. Similarly, the responsibility of any major girl, if she is without means of support shall be the responsibility of the closest eternally prohibited relation. However, if any of them has property of her own, the same should be the source to meet her upkeep expenses. No one else is responsible for bearing her burden.

(See Hidaya: 2/426-427)

The Right to Education

The progress of mankind is associated with education. If he is not

equipped with knowledge, he lags behind in the struggle of life. He is neither elevated in thought nor can he make any material progress. Nevertheless, a sufficiently long period of history passed by leaving her uneducated, for man did not deem education necessary for her. This field was the exclusive domain of man. More so, even among men, it benefited only some particular classes. The woman lived in the darkness of ignorance, far from the high pedestal of knowledge and learning.

Islam opened the doors of education on men and women alike. It removed all the impediments in its path and provided all sorts of facilities to promote its cause. It drew attention towards female education in particular, creating inducements for it, declaring it an act worthy of reward in the Hereafter. Abu Sa'eed Khudri r.a.a. reports the Prophets s.a.w. said:

من عال ثلاث بنات فادّبهن و زوّجهن واحسن اليهن فله الجنة

(ابوداؤد، کتاب الادب، باب فی فضل من عال یتامیٰ)

"The person who brought up three daughters, embellished them with education and training, married them off and remained benevolently inclined to them even after their marriage, (Allah Willing) paradise is ensured for him."

(Abu Da'ood, Kitab-ul Adab, Babo fi Fazle Man A'la-yatama)

Islam addresses both man and woman. It makes each one of them duty-bound morally to devotional acts and to observing the Shari'ah laws. It is not possible to live up to these demands without knowledge. For a woman the relationship with man is of great importance, since the relations are very complicated and of a delicate nature. They comprise woman's rights as well as her obligations. So long as she is ignorant of them, neither she can discharge her duties, nor can she protect her own rights from usurpation.

The jurists are of the opinion that for both man and woman basic knowledge of the faith is essential. If the woman is ignorant, it is the husband's duty to inform and educate her or make some

alternative arrangement for her education. If the husband fails in his duty she would herself seek and attain that much-needed knowledge, for, it is her legal right. For this purpose she can go out of her house too if necessary, but of course within the moral limits prescribed by Islam. The husband has no authority to stop her from such pursuit of knowledge.

(For details see the author's book, 'Aurat Islami Ma'ashre Mein' (Urdu))

This attitude resulted in the early phase of plan in the education of men along with the female education. Among the companions of the Prophet s.a.w. we come upon a fairly large number of the female companions well-versed in the knowledge of the Qur'an and the Hadith. Deduction of religious principles and practices and pronouncing religious verdicts in the light of the Qur'an and Hadith is not such an easy job. However, there were also women who were capable of it. Among them 'Ayesha, Umm Salmah, Umm 'Atiyah, Safiya, Umm Habibah, Asma' bint Abu Bakr, Umm Sharik, Fatimah bint Qais, Khaula bin Tawait r.a.a. and others are most prominent. (A'lamul Muwaqqi'een : Vol. 1, pp.9-11.)

The Right to Nikah

Just as a woman did not have the right to speak and express her opinion on any important issue or problem of life, she could not give utterance to her own will or desire in the matters of marriage. Her parents or elders of the family made such decisions and married her off to whomsoever they liked. She could not refuse or even protest. Her objection or opinion in this particular matter was considered extremely undesirable and most improper (violation of feminine decorum). The society interpreted it in ways reflecting on her moral character. The society considered any remark on her part relating to her marital arrangement and rejecting the selection of the elders a sign of her dissoluteness.

The general notion is that giving her a free hand in matrimonial matters is against her own interests. She is likely to take faulty decisions due to her immaturity and lack of experience.

Her parents or guardians more experienced and having better knowledge of men and matters, and thus are less likely to err in their decisions. Moreover, they are her well-wishers and cannot deceive her.

Undoubtedly, there is truth in it that her guardians can make a better selection of the partner in life for her, but one cannot deny that at times guardians are guilty of excesses in this regard. They often make these matches a means of serving their own selfish ends. At least, it is difficult to deny the fact that the parents or guardians do not keep before them norms to which their daughter attaches great importance. Therefore, it would not be in the fitness of things to leave the selection of partners for girls entirely to their guardians.

It is a fact that a girl entering a contract of marriage with a man is an important event. Both of them start a new phase of life and the match had better be in order with the mutual consent of the principal parties concerned (instead of leaving it entirely to the seconds). It would not be proper and reasonable to impose upon the girl the decision about her future life against her wishes.

Islam has certainly attached importance to the guardian of the girl to be married, but it also stresses the point that her permission is essential in a marriage tie. If the ward happens to be a widow or a divorced woman, her explicit consent (spelt out in so many words) is necessary. In case of a virgin, however, her silence connotes her consent and concurrence. Abu Hurairah r.a.a. reports the Prophet s.a.w. said:

لا تنكح الايم حتىٰ تستأمر ولا تنكح البكر حتى تستأذن

"The widow or a divorcee shall not be married without asking for her opinion (about the match) and a virgin will not be married without her consent."

The companions submitted that a virgin would not give her opinion. How are we to obtain her permission? The messenger of Allah s.a.w. said, "Her silence is her consent."

(Bukhari, Kitab-un Nikah, Bab La Yankihul Ab Wa Ghairohu Al-Bikra Was Sayyiba illa bi razaha, Muslim Kitabun Nikah)

If a guardian of a woman gives her away in marriage and she disapproves of it, it would stand null and void. Therefore, we find that when Khansa' Bint-e-Khizam was married against her wishes and the Prophet s.a.w. nullified the contract.

(Bukhari, Kitabun Nikah, Bab iza zawwaja; bnatahu wa hiya karihatun)

The Hadith literature present many more such cases. Guardians can marry off a minor girl as per their choice. However, the jurists are of the opinion that on attaining the age of adolescence, she may retain or reject it at will.

The Right to Dower

Islam has ordained man to pay the dower of the woman who he takes in nikah compulsorily, without which, Islam does not consider nikah valid. The concept of paying dower (mahar) for Nikah existed even during the period of Jahiliyah - before the advent of Islam. However, the Arabs had practically deprived women of it in various ways. The following are some examples:

1. The guardian of a woman regarded her dower as his own property and took possession of whatever she received as dower. The Arabs regarded the daughter as a disgrace to themselves, and the news of the birth of a daughter overwhelmed them with grief and shame. However, from this angle it was a source of happiness also to them that her dower would increase their wealth. That is why they called the daughter Al-Nafijah. (The means of increase), and on her birth, they congratulated - 'Happy birth to you of one who will increase your wealth.' Since they accepted only camels as dower, this meant that on marriage, she will get camels for them as her dower and they will thus increase their wealth of camels. (Ibn-e-Manzoor, Lisan-ul Arab, root noon-fa-jeem, Tafseer Kabeer, Vol.3. p.144)
2. It was also a common practice that on the death of a person

his son from a different mother would cast a sheet of cloth over the widow (not his real but a stepmother) and declare himself the owner of that widow along with the father's inheritance. This declaration confirmed his claim over that woman. Neither any other person could claim her nor could she herself do anything against the will and claim of her stepson. If he was serious about marrying her, he did so against the dower earlier paid to her by his deceased father. In case he consented to give her in marriage to any other person, her dower would be his, depriving her totally of her legitimate right. (Tafseer Kabeer, Vol.3, p.179)

3. At times taking advantage of the weak position, a man would give her lesser than the usual dower in vogue. 'Ayeshah r.a.a says that an orphaned girl under the care of a person, if she was beautiful and had property of her own and the guardian wanted to marry her, he would do so in preference to other suitors, and against much less dower than others were ready to pay her. The Qur'an put a check on this practice, instructing them to either pay their full dower according to norm or marry someone else (and not their poor helpless ward). (Bukhari, Kitab-ut-Tafseer, Surah IV, Bab verse 3)

4. During the period of Jahiliyah (Ignorance) there was yet another stratagem for getting rid of a woman's dower which has been called 'Shighar' in Hadith. This was a clever trick faced by the poor helpless women in as much as a person gave his daughter in marriage to another person on condition that he in turn would give his daughter in marriage to him. In this exchange, neither of them paid either woman any dower (one cancelling the other).

Islam put an end to this unjust practice. Thus, Abdullah bin 'Umar r.a.a. records:

نَهٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنِ الشِّغَارِ

"The Prophet has prohibited 'Shighar'."
Bukhari, Kitabun-Nikah, Babus 'Shighar', Muslim Kitab-un-Nikah, Babo Tahreem-e-Nikahis Shighar wa butlanehi.

Another report records:

لاشغار فى الاسلام

"There is no 'Shighar' in Islam."

(Muslim, Ibid. One report says that the exposition of 'Shighar' was furnished by the Prophet s.a.w. himself. But the report is not so authentic in the matter of authority. Mostly this exposition has been reported by Abdullah ibn 'Umar r.a.a. and his disciple Nafe'. This is also an authentic exposition. For details see Fathul Bari, Vol.9, p.128.)

In the report quoted by Bukhari the exchange of daughters without dower has come for mention. Another report quoted by Muslim reports exchange of sisters too. Both these are merely examples, otherwise as remarked by Imam Navavi, the ulama are unanimous on it that besides them, exchange of nieces, paternal aunts and cousins like uncle's daughters also come under the same prohibition. (Sharah Muslim, Vol. I, p. 454-455)

There is consensus of the ulama that Islam declares this practice of Jahiliyah unlawful. However, they differ on the issue that the marriage contracts made on this basis shall be lawful or declared illegal and shall not hold.

A report of Abu Da'ood says that Abbas son of Abdullah Ibn Abbas r.a.a. gave his daughter in marriage to Abdur Rahman bin Hakam and he did in turn marry his daughter to Abbas, making this cross-marriage, the dower (they cancelled each other). When Mu'awiyah r.a.a. learnt about it, he wrote to his governor of Madina, Marwan, to separate them legally as it is Shighar and prohibited by the Prophet s.a.w.

(Abu Da'ood, Kitabun-Nikah, Babus 'Shighar')

Imam Malik, Imam Shafi'i and Imam Ahmad r.a. and some others declare such a marriage illegal. Imam Abu Haneefah and Sufyan Thauri r.a. are of the opinion that the nikah is valid but both women shall be entitled to equal dower. To them the fault

lies here in usurpation of dower, and its remedy is its payment to both of them, in accordance with the usual practice among the women of their class and status.

(Ma'alim us Sunan: Vol. 3 p.192. Sharah Muslim Lin-Navavi: Vol. 1, p.454)

Thus, Islam declared dower to be the exclusive property of the woman and removed all the false and unjust claims on it one by one. It openly declared:

وَ اٰتُوا النِّسَآءَ صَدُقٰتِهِنَّ نِحْلَةً (النساء:۴)

"And give them, the women, (on marriage) their dower as an obligation." *- Al Qur'an IV: 4*

Allamah Abu Bakr Jassas says in its exposition:

ان المهر لها وهى المستحقة له لاحق للولى فيه

(احکام القرآن:۲/۶۹)

"Dower is her property. She alone has a right to it. Her guardian has no claim to it."

(Ahkam ul Qur'an, Vol. 2, p.69)

The Islamic *Shari'ah* does not prescribe any perimeter on the amount of dower. It can be increased or brought down according to the financial status of the person entering the marriage contract. However, it certainly proposes it to be an amount the man can easily pay. The jurists differ on the issue of fixation of the minimum amount of dower. Those belonging to the Hanafite School of jurisprudence put it at not less than ten *dirhams*. (Discussion on Mahr in the next chapter) It is evident from the above that mahar, whether less or more, is a legal right of woman. In accordance with the Islamic jurisprudence, one cannot deny her this right. Many a times, people consider mahar as against the honour and dignity of a woman. There are other objections to it as well. We detail them later in this book.

The Right of Maintenance

Before her marriage, the responsibility of the upkeep of the girl devolves on the father. After marriage, her maintenance becomes the concern and a binding one too, of the husband.

According to the Shari'ah, the maintenance of the wife is compulsorily the responsibility of the husband, without consideration of her financial status. The Hanafite School says that if the husband and wife are both wealthy, the maintenance of the wife shall be according to her status in life. In case of the wife being at a financially lower status, her maintenance shall be the mean between the rich and the poor. However, if the reverse is the case, he shall spend on her according to his means, and any deficiency shall become a liability as credit due from him to pay to her at his convenience.

If the woman is rich, a servant she is also entitled to a servant. If the wife does not want to live together with the husband's relations, she can demand a separate house. It is her legal right and the husband has to meet it.

In this connection, it would not be improper to mention here that according to the Hanafite Fiqh, service to her husband and doing household chores is not the duty of the wife. If she undertakes, it is her courtesy and the urge of her moral virtue. She cannot be compelled to undertake it.

(These details have been furnished from the Hanafite Fiqh. Hidayah: Vol. 2, p.417-419. Other schools have minor differences)

The Right to Trade and Work to Earn

Islam has granted the woman freedom of economic pursuits in the form of business, profession and work (any of the public services). Islam permits her to undertake trade, agriculture, financing, industry, service, teaching jobs, journalism, writing, and compilation of books-in fact all permitted trades. For this purpose she can come out of her house too if necessary. However, it imposes certain restrictions on her in this connection. There are two objectives behind these checks on her. In the first place her activity outside should create no confusion and interference in the order of the household and the normal life of the family circle and its stability and harmony should not be disturbed. Secondly, the

woman should be able to lead an existence of modesty and chastity, and she should not face circumstances, which make it difficult for her to adhere to moral bounds.

(For further details see the chapter, 'The Economic Problem of Woman, in this book)

The Right to Property

There were many nations in the world that denied their women the right of ownership. She had no share in the family property. Rather, even her own earnings were not her property. What she earned through her own efforts became the property of the father, husband, sons, or other male members of the family. Islam recognized the right of a woman to ownership of the property and declared any meddling with it wrongful and unlawful. According to it, just as a man has a claim to the honestly earned wealth, so has a woman a right to own and use her lawful earnings.

لِلرِّجَالِ نَصِيبٌ مِّمَّا اكْتَسَبُوا ۚ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا اكْتَسَبْنَ ۚ

(النساء:٣٢)

"To men is allotted what they earn and to women what they earn." *- Al Qur'an IV: 32*

A woman's share that she receives from her parents, husband or the offspring under the Islamic Shari'ah laws or what she earns through her own economic effort, she is the rightful owner of it all, and is entitled to spend it as she likes. She can spend on her own person, her husband and children, parents and other members of the family of her own free will. She can also invest it in charitable acts. She also has the right to the sale and purchase of property, form trusts, present gifts, and bequeath it at her own discretion. Nobody can interfere in these matters.

The Right to Honour and Dignity

Honour and dignity is a valuable asset of man. Islam does not

allow playing with and high-handedness on it. Attacks on the honour and dignity of a woman have been a common practice and due to her weakness, she has not been very successful either in protecting them. There are two forms of attack on her: Qazaf (slandering) and fornication. Qazaf means to questioning the honour and dignity of a woman and tarnishing her fair name by accusing her of dissoluteness and fornication. According to Islam, it is a great crime and a grave sin. The Prophet s.a.w. has mentioned one of the seven mortal sins in these words:

قـذف الْمحصَنـات المؤمنات الغافـلات

(مشکوٰۃ، باب الکبائر وعلامات النفاق، بحوالہ بخاری ومسلم)

"It is Qazaf or slandering chaste innocent believing but indiscreet woman."

(Mishkat-Bab-ul-Kaba'ir, wa'alamat-in-Nifaq, Ba hawala Bukhari and Muslim)

As a legal measure against it, Islam imposed the severe punishment of eighty lashes for calumniating a woman with illicit sex and Islam debars such a person from appearing as a witness. Allah says:

وَالَّذِيْنَ يَرْمُوْنَ الْمُحْصَنٰتِ ثُمَّ لَمْ يَاْتُوْا بِاَرْبَعَةِ شُهَدَآءَ فَاجْلِدُوْهُمْ ثَمٰنِيْنَ جَلْدَةً وَّلَا تَقْبَلُوْا لَهُمْ شَهَادَةً اَبَدًا ۚ وَ اُولٰٓئِكَ هُـمُ الْفٰسِقُوْنَ ○ اِلَّا الَّذِيْنَ تَابُوْا مِنْۢ بَعْدِ ذٰلِكَ وَ اَصْلَحُوْا ۚ فَاِنَّ اللّٰهَ غَفُوْرٌ رَّحِيْمٌ ○ (النور: ۴، ۵)

"And those who launch a charge against chaste women and produce not four witnesses (to support their allegations), -flog them with eighty stripes; and reject their evidence ever after: for such men are wicked transgressors, except those who repent thereafter and mend (their conduct); for Allah is Oft-Forgiving, Most Merciful." - *Qur'an, XXIV: 4-5*

Now taking the issue of fornication and molestation of women, under the Islamic law, any person found guilty of raping a woman forcibly, in case he is unmarried shall receive hundred cuts

of the lash and shall be stoned to death if he is married. However, if the woman as his partner cooperates with him she too shall be liable to the same punishment.

(The details of these ordainments can be found in the Qur'an, Hadith and Fiqh)

The Right to Criticise and Correct

Undoubtedly, Islam has exempted the woman from collective and political responsibilities. (We shall discuss this issue later at length). But this exemption does not mean that she shall remain totally unconcerned with these affairs and evince no interest in the collective welfare. The Qur'an has ordained that both man and woman should enjoin good and forbid evil:

وَالْمُؤْمِنُوْنَ وَالْمُؤْمِنٰتُ بَعْضُهُمْ اَوْلِيَآءُ بَعْضٍ يَاْمُرُوْنَ
بِالْمَعْرُوْفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ (التوبہ:۷۱)

"The believing men and women are one of another: they enjoin what is just and forbid what is evil."

-Al-Qur'an IX : 71

Enjoining good and forbidding evil has very wide and far-reaching demands. Call to Faith and preaching too is a part of those demands. It includes reformation of ummah by criticism and calling people to account include rulers. It is the responsibility of a woman to meet all these demands within her own limits of action.* History bears testimony to the fact that women of the early phase of Islam realized this responsibility and fulfilled it.

* For details see the author's book 'Mulsim Khwateen Ki Zimmedariyan'.

PART II

AN APPRAISAL
OF
THE OBJECTIONS RAISED

Chapter 3

A General Comment

What are the rights and obligations of a woman is a very complicated and delicate question of modern age. The discussions and debates on this topic, both in the past and the current, if collected together would most fairly equip a small library. However, all these discussions have failed to answer the question satisfactorily. Rather, it would not be wrong to say that they have further complicated it. In answering this question, Islam too has taken a certain stand. It has not come as a reaction to the present day activity, but has existed from the earliest times. It was there yesterday, exists today and shall remain extant until the end of days. This stand of Islam was totally against that which had existed and recognized for centuries and was in vogue throughout the world. The Islamic stand has love, sympathy, help, and cooperation for woman, her age and the nature of her relationship with man, recognition of her personality in her own right (separate from man), protection of her life, property, honour and dignity, her economic and political rights and responsibilities in keeping with her strength and capabilities. One may safely assert that it provides fully for the development and perfection of her personality. It is a very clear, logical, and powerful stand, which helps resolve the complications posed by the present day stand on her position and status in the social life.

Some people are irrational and biased against Islam. Owing to their peculiar religious and political thought and views, they cannot bring themselves to recognize the excellence of Islam. They totally ignore the positive role of Islam in connection with the womankind. Prejudice and narrow mindedness are the two most dangerous diseases. Those afflicted with them fail to notice facts and realities of great importance. Moreover, even after

observation, they try to conceal them. Nevertheless, one cannot conceal realities. Facts must stand out in spite of one's efforts to overlook them, and must get them recognized eventually. So long as the radiant truths and clear teachings of the Qur'an and Hadith and the juristic and legal discussions of Islam exist in this world, which were the bases of taking decisions on all sorts of problems for centuries, no one can deny the favours of Islam to womankind.

Some people are of the opinion that Islam did correct and reform the miserable position of women in the Jahil (Ignorant) society and conferred on her certain rights denied to her earlier, but still it failed to do full justice to her. In other words, it denied to her the rights it conferred on man. Thus, it failed to establish complete equality of sexes.[1]

The rights conferred by Islam on women face several objections in the context of the superiority of man in Islam. For example, man is the guardian and supervisor of the home, can marry more than one wife, and can divorce his wife, whereas, a woman receives only half the share of a man in the inheritance, besides receiving unequal treatment in evidence, Qisas (retaliatory punishment equal for equal), and Diyat (blood money for loss of life and lesser injuries). These are among the many objections levelled against the Islamic Law. Those invoking these objections desire that those laws be repealed, the superiority (higher position) of man is done away with and women be granted all those rights exercised by man in the household. Both should have equal authority in all domestic affairs. The woman

1. In this country of ours the problem of Muslim Personal Law is a burning issue which is very much alive. The entire Ummah is anxious in this behalf and striving for its protection and survival. Personal law though concerned with so many individual and collective ordainments and some rights of man also form part of it, yet the problem that has gained ascendancy in importance is that relating to the rights of women. The opponents claim that under the Muslim Personal Law justice has not been meted out to woman and she does not enjoy all that might have been her due. So the rights of women are invoked everywhere in their loud appeals for justice to her and demands are made for amendments and changing the Personal Law itself.

should be at par with man in her share of inheritance, she should have the power to divorce, she should be able to get rid of her partner as, and when she pleases. In case of divorcing her, man should bear expenses of her life-long upkeep. No man should have permission to marry another wife if he already has one. At times, they even do not hesitate in claiming for the woman the right to have more than one husband, the way man can have more than one wife. The woman should get all those political and social rights, which a man enjoys. All these objections result from ignorance of the Islamic teachings. It is a pity so many of the highly educated and so-called intellectuals share this ignorance. The very wide and comprehensive concept of life given by Islam and the way it has helped build the edifice of the personal and collective life automatically removes the objections raised against it.

These objections are not of recent origin. Muslims have been facing them since long and the practice continues with greater fury now. During this period, people have made efforts to remove them. It is deplorable and contravention of intellectual honesty that these objections keep repeating as if presented before the world for the first time and the Muslim thinkers are dumb-founded. This leads us to think that at the back of this practice, there is very little desire to understand Islam and the greater part of their interest centres on making it the target of destructive criticism. Yet, a reasonable course should have been to give serious thought to the Muslim rejoinders to their objections and to point out any shortcomings in them. This would have opened avenues for mutual understanding, removal of misunderstandings, and Islam would have led to understanding Islam in its proper perspective.

People who raise these objections have their minds are stuffed with the immoderate view of equality of sexes, presented by the West, which has them in its tight grip. This is no more a

view but has been under experiment for long and its results are before the world in the form of sexual vagrancy and ruination of the family and corporate life.[1] However, advocates of these views overlook the results of these experiments and keep pursuing progression of their views to show that therein is a harmless emancipation of the woman from all ills. If Islam cannot keep pace with it, it is the demand of our intellect to say-good-bye to it, although the experiment in the recent history of humankind has brought to light the value, utility and purity of the Islamic view. Whenever that Western view of the equality of sexes is reformed and its immoderation removed, it must approach very close to the Islamic view. Rather it would be more correct to say that Islam alone can reform it and remove its shortcomings.

Attacks by the opponents of Islamic stand on women have been so violent that they have even influenced a considerable number of Muslims too. These Muslims pay lip service to Islam, and these objections daunt them as they begin conjecturing many infirmities in the Islamic teachings.

There are various categories of this overall approach. It is not so easy to identify each one of them. Some people, they may or may not admit it, are those who want to get rid of these 'decadent' and 'impracticable' laws. To them the destiny of woman is what is determined today by the West and not by Islam. She can never advance on the path of progress so long as people confine her to the 'enclosure' of Islam. For such progress she will have to run about free among those 'meadows' prepared for this purpose by the West. A Muslim, so long as he subscribes to Islam, cannot subscribe to their wishes and endeavours. For him the laws prescribed by the Shari'ah are the limit, which he must not overstep. If ever he is guilty of breach in this respect, he regards himself a criminal and answerable to Allah and it will be his endeavour to retract his steps for re-entry to this limit. It is the

1. It has already come for discussion under "The Western Concept of Women's Liberation."

demand of his belief in the divine Faith. Here, all the laws of the Islamic Shar'ah are not the subject or our discussion. We are presently concerned only with those relating to familial life. The Qur'an has called these laws as the limits prescribed by Allah at various places in the Qur'an and has sternly forbidden the believers from violating them.

At one place, while mentioning divorce, Quran observes:

تِلْكَ حُدُوْدُ اللّٰهِ فَلَا تَعْتَدُوْهَا ۚ وَمَنْ يَّتَعَدَّ حُدُوْدَ اللّٰهِ
فَاُولٰٓئِكَ هُمُ الظّٰلِمُوْنَ ○ (البقرہ:۲۲۹)

"These are the limits ordained by Allah; so do not transgress them, if any do transgress the limits ordained by Allah, such persons wrong themselves (as well as others)."
-Al-Qur'an 2: 229

'Sura-Talaq' mentions the laws of divorce, immediately after which, it observes:

وَكَاَيِّنْ مِّنْ قَرْيَةٍ عَتَتْ عَنْ اَمْرِ رَبِّهَا وَرُسُلِهٖ فَحَاسَبْنٰهَا حِسَابًا
شَدِيْدًا وَّ عَذَّبْنٰهَا عَذَابًا نُّكْرًا ○ فَذَاقَتْ وَ بَالَ اَمْرِهَا وَكَانَ
عَاقِبَةُ اَمْرِهَا خُسْرًا ○ اَعَدَّ اللّٰهُ لَهُمْ عَذَابًا شَدِيْدًا ۙ فَاتَّقُوا اللّٰهَ
يٰٓاُولِى الْاَلْبَابِ ۚ الَّذِيْنَ اٰمَنُوْا ۚ قَدْ اَنْزَلَ اللّٰهُ اِلَيْكُمْ ذِكْرًا ○
(الطلاق:۸-۱۰)

"How many nations that insolently opposed the command of their Lord and His messengers did we not call them to account, - to severe account - And we chastised them with a horrible chastisement. Then, did they taste the evil result of their conduct, and the end of their conduct was Perdition. Allah has prepared for them a severe Punishment (in the Hereafter). Therefore, fear Allah O ye men of understanding-who have believed! -For Allah hath indeed sent down to you a Message"
-Al Qur'an LXV: 8-10

After this admonition, can any Muslim imagine opposing the right of women, familial laws, or any law of the Shari'ah for that matter?

Then, there are others, not so overwhelmed by the Western concepts and views as to reject the Qur'anic injunctions as old and time-barred. However, they are labouring under the erroneous notion that gone are the days when the Islamic Shari'ah was revealed and conditions today are totally changed. Insistence on centuries old principles and traditions under the changed circumstances is not appropriate. This is the age of advancement and competition. Islam's stand relating to woman is not the one that can let her compete in the modern age, and her lagging behind in this race means retardation of the entire nation. Therefore, what one needs is to amend the Islamic laws to fall in line with the modern trends. To them it is 'ijtehad.' Moreover, under the changed conditions 'ijtehad', is must. Those who refrain from such 'ijtehad' have to put up with the taunts of misinformation and conservatism from these iconoclasts.

Then there are those who go even further and say, wearing a mask of simplicity and innocence that Islam is a modern religion. It has conferred on the woman all the rights of the modern age, but the conservatives have interpreted the Qur'an and the Hadith in a way reminiscent of the days of slavery. Therefore, we definitely need a modern and progressive interpretation of the Qur'an. Who is there who will not applaud them for this understanding, insight and enlightenment?

Those who desire amendment in the Islamic Law in the name of "ijtehad" most probably presume the Islamic Law to be like man-made laws, which can be amended and repealed as and when the law maker so desires. On the other hand, Allah revealed the Islamic law, and therefore, no one has the permission for an iota's change. Even the Prophet to whom Allah revealed this Shari'ah did not have this permission.

وَ اِذَا تُتْلٰى عَلَيْهِمْ اٰيَاتُنَا بَيِّنٰتٍ ۙ قَالَ الَّذِيْنَ لَا يَرْجُوْنَ لِقَآءَ نَا
ائْتِ بِقُرْاٰنٍ غَيْرِ هٰذَا اَوْ بَدِّلْهُ ۭ قُلْ مَا يَكُوْنُ لِيْٓ اَنْ اُبَدِّلَهٗ مِنْ

تِلْقَآئِ نَفْسِيْ ۚ اِنْ اَتَّبِعُ اِلَّا مَا يُوْحٰٓى اِلَيَّ ۚ اِنِّيْٓ اَخَافُ اِنْ عَصَيْتُ رَبِّيْ عَذَابَ يَوْمٍ عَظِيْمٍ ○ (یونس:۱۵)

But, when our clear signs are rehearsed unto them, those who rest not their hope of their meeting with us, say: "Bring us a Qur'an other than this or change this." Say: "It is not for me of my own accord to change it: I follow not but what is revealed unto me: If I were to disobey my Lord, I should myself fear the chastisement of a Great Day (to come)." -Al Qur'an X: 15

The other aspect is that man made laws are the product of time and the existing conditions. They are not free from the limits of time and space. They are very flexible and change with the times. Rigidity in the man made laws is not their merit but a defect that makes them impracticable under changed conditions. However, anyone who studies Islam even cursorily, with an open mind, cannot deny the fact that the Qur'an presents itself as an eternally abiding faith, which cannot change until the end of time. As for ijtehad, it is something altogether different. It does not aim at changing the evident Qur'anic injunctions, rather at deriving newer ones in the light of these (Qur'anic) injunctions. One cannot undertake the work of ijtehad with unlimited freedom but will have to bind strictly with the limits ordained by Islam.

Here a question persistently strikes us: Why are these 'reformers' so much worried about the rights of women and social reform among the Muslims? There are many evils in the Muslim community, those of creed, action, morality, dealings etc., but why do they evince so much interest in and anxiety about Muslim women's aggrieved state? Why do other more serious problems not engage their attention with so much anxiety and compassion as the issues concerning women's rights?

From a casual study of the minds of these "philanthropists" we learn that to them the end and object of man's life is and should be that appointed by the West. For this purpose, they have adopted also the same course. A salient feature of it is that

religion and faith are meaningless terms. They do not concern our life and have little bearing on it. If anyone is interested in religion, he may follow it in his private life. The collective life should however, be free from that "paraphernalia." So long as man sticks to the bounds of religion, he shall be rotting in the dark ages of the past. The avenues of progress shall remain closed on him. He has no right to live in the modern age.

They want to take the entire Muslim *Ummah* on this path. To this end, perhaps they regard the social reform more useful. In addition, with a clamor over this issue of Muslim women's right they probably expect to achieve greater success. For, to them, so long as the Muslim woman remains bound by the norms of old concepts, and is teaching and preaching to the younger generation loyalty to Allah and His Apostle, the strong bonds of religion cannot become loose enough to detach the Muslim *Ummah* from their Faith and its practice, notwithstanding their lack and zeal and strict adherence. Their turning away from it is possible only with the woman changing her orientation vis-à-vis the Faith, and holding aloft the banner against it in the struggle for her rights. Since they have so far not achieved any success in their endeavours and for that matter should not expect to succeed, they give vent to their pent-up feelings of anger and grief against the standard-bearers of Faith, calling them names like conservatives and old-fashioned revivalists and fundamentalists. Every word they uttered or write is an authority and the modern times have arranged for their wide publicity. Therefore, they proliferate these '*cultured outbursts*' and '*polite downpour*' without hesitation or restraint!

Some of them are people with a religious bent of mind and in real earnest desire to keep away from the unhappy experiences of the Western civilization but its onslaught from every direction is so powerful that they themselves are not entirely free from its pestilential influence. Gradually their way of living is changing and the Western civilization is surreptitiously creeping into it, its grip

on them is getting firmer each day. However, even at this critical stage they are happy with the idea that in spite of their participation in the blind pursuit of Western civilization, their own culture is free from its evils and shall remain immune in future. Nonetheless, this is a false self-assurance and sort of a pious wish, which shall at best be short-lived. If so far they did not swallow the acrid fruit of the West, it is due to the counter-balancing effects of the *Islamic faith* that its evils have not surfaced yet. When these salubrious effects disappear, the Western civilization, with all its evils, shall descend into their courtyards. Those not roused to activity to guard their houses, on observing the first sign of a deluge, cannot escape inundation. Nobody can save it.

In the next chapter, we would take stock of more objections relating to woman's rights.

Chapter 4

Man's Ascendancy and Rule

Islam has discussed in detail every aspect of the conjugal life and presented a broad and comprehensive picture of the family. One of the objections against Islam is the extraordinary rights and powers that it endows on men, which curtails women's freedom. Man is in authority and rule and can drive her as he pleases so long as she keeps herself bound in the shackles of a marriage tie. She can in no way take the offensive against him.

This picture of a woman's aggrieved state and helplessness is as far from truth as it is horrible. In painting this dreadful portrait of hers, perhaps greater time and effort have been devoted to the distortion of Islam than to understand of its teachings.

Conjugal Relation is One of Affection and Love

Let us first take up the religious and moral aspects of this problem, which have the basic importance in the Islamic version of familial life. According to Islam, the real and basic relationship of the husband and wife is that of affection and love in which both of them in their own spheres and each in his or her own turn tries to please and meet the requirements and provide ease and comfort to the other. The Qur'an declares this love and affection as one of the Signs of Providence. It says:

وَ مِنْ اٰيٰتِهٖۤ اَنْ خَلَقَ لَكُمْ مِّنْ اَنْفُسِكُمْ اَزْوَاجًا لِّتَسْكُنُوْۤا اِلَيْهَا
وَجَعَلَ بَيْنَكُمْ مَّوَدَّةً وَّرَحْمَةً ؕ اِنَّ فِيْ ذٰلِكَ لَاٰيٰتٍ لِّقَوْمٍ
يَّتَفَكَّرُوْنَ ○ (الروم:۲۱)

And among His Signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquillity with them, and He has put love and mercy

between your (hearts): Verily in that are Signs for those who reflect. - *Al Qur'an XXX: 21*

At another place, Quran describes that spouses are like garments for one another:

هُنَّ لِبَاسٌ لَّكُمْ وَ اَنْتُمْ لِبَاسٌ لَّهُنَّ (البقرہ:۱۸۷)

"They (the women) are your garments and you (men) are their garments." - *Al-Baqarah 2:187*

This characterisation has a deep significance. Dress has certain attributes. The Qur'an wants the same attributes to characterise the relationship of husband and wife. One aspect of the dress is that it is next to one's body and nothing intervenes between the dress and the body. Similar is the relationship of husband and wife in a world of materialistic relationships, the closeness found in conjugal relationship is unique. Secondly, dress protects a person from climatic hardship. Husband and wife too must help one another in overcoming various hardships, in achieving peace and solace and in not letting life become uncomfortable. Thirdly, dress covers those parts of body whose exposure is shameful. Similarly, husband and wife should hide each other's weaknesses and drawbacks and not let them be exposed. Fourthly, dress is a means of adornment. Similarly, the husband is an adornment for the wife and the wife for the husband. The beauty of this world rests on the harmony of this relationship. Otherwise, life will become dull and barren. This particular simile of "dress" is pointing towards many such sublime realities.

In addition, the traditions of the Prophet s.a.w., explain the same from various angles. In one of his sayings:

التی تسرہ اذا نظر و تطیعہ اذا امر ولَا تخالفہ فی مایکرہ فی نفسھا و مالہ (مسند احمد:۲/۲۵۱۔نسائی،کتاب النکاح،ای النساء خیر)

"When the husband looks at her she should gladden his heart; if he suggests something she should accept it cheerfully and whichever item of

expenditure the husband disapproves of, she should (abstain from it) and not displease him by insisting on it."

(Musnad Ahmad: Vol.2 p.251, Nisai, Kitabun-Nikah, Ayyun-Nisae 'Khairun)

Similarly, the tradition terms a polite husband as the best person. Accordingly, 'Ayesha r.a.a. reports that Prophet s.a.w. said:

خیرکم خیرکم لاهلـه و انا خیرکم لاهـلی

(ترمذی، ابواب المناقب، باب فضل ازواج النبیؐ۔ ابن ماجہ کتاب النکاح باب حسن معاشرۃ النساء)

"The better person among you is one who is kindly disposed to his family and I am the best among you in benevolence to my family."

(Tirmizi, Abwab-ul-Manaqib, Bab Fazle-Azwaajin-Nabie Ibn-e-Majah, Kitabun Nikah, Babo Husn-e-Mu'ashiratin Nisae)

There are many traditions on this theme.[1] If the husband and the wife adopted the moral standards stated therein, the family would become the haven of peace and blessings and one can easily build an ideal society on those lines.

Why is Man the Head of the Family?

Taking up now directly the problem of man's guardianship and supervision of the family, we notice that every institution, big or small, needs the services of a supervisor to run it smoothly and maintain perfect discipline in it. It is his responsibility to keep in view the interests of the institution foremost, recognize the right of its members and treat them with love and kindness. Those associated with the institution should also obey the supervisor cheerfully.

So long as he keeps in view the interests of the institution they should not defy him and rebel against his orders and in controversial issues his decision should be accepted as final on all hands. The position of leadership can be the privilege of only one person. In case of more than one person trying to handle its affairs, each one

1. See the author's book, Aurat aur Islam: pp. 22-24

insisting on his or her own opinion, the organisation of the institution will go topsy-turvy. The family too is an institution and a complex one. Its organisation can remain only when only one person is at the helm of affairs to manage it. If the authority is duplicated the organization will cease to function. Rather, its very existence will be in peril. The only question that needs consideration is: who is to be the head of the family, man or woman? The following Qur'anic verse provides an answer to this question:

اَلرِّجَالُ قَوّٰمُوْنَ عَلَى النِّسَآءِ بِمَا فَضَّلَ اللّٰهُ بَعْضَهُمْ عَلٰى بَعْضٍ وَّ بِمَآ اَنْفَقُوْا مِنْ اَمْوَالِهِمْ ط (النساء:۳۴)

Men are the protectors and maintainers of women because Allah has given the one more (strength) than the other and because they support them from their means. - *Al Qur'an IV: 34*

In this verse, Quran advances two reasons for appointing man as the head of the family. Firstly, he has superiority in strength over woman and secondly, he spends his substance on her. That means that the Qur'an chose man as the head of the family not because of any prejudice, but in consideration of his capabilities and his financial responsibilities. Let us now ponder over these two arguments in detail.

Man is Stronger

In general, the physical and mental make-up of man and woman points to the fact that nature has better equipped man, both physically and mentally, to bear the burden of a family. He is capable of greater effort in seeking the livelihood, his own and that of the family, and can undertake difficult and labour consuming efforts in agriculture, industry and other fields. In the face of hardships of life and in overcoming them, he manifests better capability. But this marvellous fact can also be witnessed that the jobs that are considered exclusively the woman's fields of activity and she has been at them since the dawn of man's birth, like cooking, tailoring and washing etc., in these jobs too man

exhibits superior skills and powers. The bosom of a woman is the centre of finer sentiments and delicate feelings. Both happy and sad events leave her worse than man. Therefore, it occurs to us at first sight that she should be able to express these impressions much more effectively than man should. However, it is a historical fact that in literature, poetry, art and fine arts, the height of perfection (in both imagination and skill) the level attained by man, a woman could not even dream. Man has presided over all the fine arts through the ages. One may assert that man had the monopoly in all these departments and woman had no occasion to exhibit her capabilities in them. Then again, this further raises a question: How did man gain a monopoly here and how was woman left behind in this race for perfection and superiority in skills? Therefore, one must admit that man can furnish better proof of his capacity for perfection in skills as well as put in greater energy and has done so in every age.

When experience furnishes evidence that man is capable of putting in greater amount of energy and superior capabilities, he must naturally be the head of the family. Not to acknowledge man's superiority and trying to put woman on a par with man in every respect is a sort of reaction or prejudice, which may sound logical in discussion and debate. However, in the battlefield and bivouac of life, it cannot go far enough in our support, and one is bound to admit the facts and realities of life.

Man Bears the Financial Burden

Now let us consider the financial responsibilities of man. According to the Islamic law, man must pay the woman her dower; accept the responsibilities of her maintenance and provision of her lodging with all the amenities of life. In addition, along with them he has to arrange for the wife's education and training, looking after the religious and moral supervision and undertaking the responsibility of the protection of her life, property, honour and dignity.

Man accepts this burden with the expectation, that under his supervision, his wife shall manage the house, shall provide him peace, shall educate the children and thus co-operate in building up a healthy family.

To meet these financial and administrative responsibilities properly, Islam endows man with certain rights, privileges, and powers. However, they are not absolute and unlimited. There are certain limits beyond which he cannot go in exercising these powers and privileges. Undoubtedly, in practical life, there are possibilities of men overstepping the prescribed limits and making wrongful use of their powers and women becoming the victims of excesses. Islam does not overlook or disregard this possibility. The woman under these conditions can compel man to abide by the limits through legal action. Under inevitable circumstances, she can obtain her freedom through Khula' (legal divorce at the request of the wife) or separation from the husband.

Can a Woman Head the Family?

In their zeal to overreach themselves in championing the cause of woman's liberation, some persons went to the extent of stripping man totally of the rights, privileges and power devolving on him normally in familial life to meet his onerous responsibilities. Obviously enough, in the course of deprivation from all authority in his own family and home, one cannot expect him to meet his financial responsibilities as the head of the family. Therefore, the only feasible solution that presents itself under the changed situation is that woman, who is now in saddle, is the new protector and maintainer and all the rights and powers associated with that position have been vested in her; she must also take upon herself all the responsibilities that formerly used to be man's headache. As long as she does not accept and meet those responsibilities, one cannot justify transferring to her the important and difficult job of heading and supervising the family.

One of the arguments is that under the changing social

conditions, woman's maintenance is no more a problem since she has already started making economic efforts, doing jobs and rendering utility services to the society, which is remunerative, thus attaining economic independence. However, apart from the fact that such working and economically independent women are a negligible minority in our society, the problem is not really one of her own maintenance and independence alone. It also involves bringing up children, their upkeep, education and training, liabilities of their marriages and multifarious other problems relating to other members of the family in a wider sense. The question arises whether a woman along with her own support can meet fairly and squarely all the other problems devolving on her as the head of her family.

Undoubtedly, there have also been exceptional women in every age with a sound economic position and capable of satisfactorily managing family affairs too. They are present in our existing society and shall be there in future too. However, a microscopic minority cannot solve a gigantic problem, as it concerns along with them the untold millions, each one having a problem crying for solution. Apparently enough notwithstanding the counselling and support of her so-called well-wishers, the champions of the cause of woman's lib, she does not appear to forgo her time-honoured and well-recognized right of maintenance, nor is she prepared to shoulder the onerous responsibilities of the familial organization as an independent charge.

Chapter 5

Restrictions with regard to Hijab
(Purdah or Seclusion)

Hijab Regulations

The regulations with regard to *Hijab* appear in different passages of the Qur'an. Their contexts may be different but they are unambiguous in meaning, import, aim and objective. It is easy to appreciate not only the temperament and inclination of Islam but also its standpoint, consequent upon this absence of ambiguity.

Etiquette of Conversation with Strangers

The holy spouses of the Prophet of Allah (PBUH) are the mothers of his *ummah*. (Qur'an, 33:6) They are role models for the community and Quran addresses them as follows:

يٰنِسَآءَ النَّبِيِّ لَسْتُنَّ كَاَحَدٍ مِّنَ النِّسَآءِ اِنِ اتَّقَيْتُنَّ فَلَا تَخْضَعْنَ
بِالْقَوْلِ فَيَطْمَعَ الَّذِيْ فِيْ قَلْبِهٖ مَرَضٌ وَّ قُلْنَ قَوْلًا مَّعْرُوْفًا ۚ

(الاحزاب:۳۲)

"O consorts of the Prophet! Ye are not like any of the (other) women: If ye do fear (Allah), be not too complaisant of speech, lest in whose heart is a disease should be moved with desire: but speak ye a speech (that is) just." - *Al Quran - 33: 32*

This verse instructs how to converse with unrelated people. There are two instructions. First intonation must be formal and emotion-neutral in order to nip the evil desire in the bud in the addressee's heart. The theme of the discourse should be decent, decorous and civilized and should never be indecent, vile and indecorous.

Home should be the Sphere of Activities

After the two instructions given above, the Qur'an states:

وَقَرْنَ فِيْ بُيُوْتِكُنَّ وَلَا تَبَرَّجْنَ تَبَرُّجَ الْجَاهِلِيَّةِ الْأُوْلٰى وَ اَقِمْنَ الصَّلٰوةَ وَاٰتِيْنَ الزَّكٰوةَ وَ اَطِعْنَ اللّٰهَ وَرَسُوْلَهٗ ؕ اِنَّمَا يُرِيْدُ اللّٰهُ لِيُذْهِبَ عَنْكُمُ الرِّجْسَ اَهْلَ الْبَيْتِ وَيُطَهِّرَكُمْ تَطْهِيْرًا ○ (الاحزاب:۳۳)

"And stay quietly in your houses and make not a dazzling display, like that of the former times of ignorance: and establish regular Prayer, and give regular charity and obey Allah and His Messenger. And Allah only wishes to remove all abomination from you, ye Members of the Family, and to make you pure and spotless." - *Al Quran - 33: 33*

This verse orders the Prophet's wives to stay peacefully at home (except on necessary errands), to abstain from upholding the abominable customs and social behaviour of the pre-Islamic era, to uphold the institutions of Prayer and charity, and to uphold active allegiance to Allah and His Messenger in all matters pertaining to human existence. The raison d'etre for this is to ensure that the lives of the members of the Prophet's family are free from morally objectionable qualities and that their conduct and character are sublime. Actually, this advice addresses the Prophet's family, but is applicable to the entire community so that it may realize the order in social life and its contours.

How should things change hands?

These verses are from Surah *Ahzab*. Later, in the same chapter, we find the following instruction:

وَاِذَا سَاَلْتُمُوْهُنَّ مَتَاعًا فَسْئَلُوْهُنَّ مِنْ وَّرَآءِ حِجَابٍ ؕ ذٰلِكُمْ اَطْهَرُ لِقُلُوْبِكُمْ وَ قُلُوْبِهِنَّ ؕ (الاحزاب:۵۳)

"And when ye ask (his ladies) for anything ye want ask them before a screen: that makes for greater purity for your hearts and for theirs." - *Al Quran - 33:53*

In the verses quoted above, the relevance of the wisdom and

utility contained in hijab is greater towards the Muslim women in general than towards the Prophet's wives. Both Muslim men and Muslim women can thereby protect their hearts from vulgar thoughts and obscene urges.

Observing Jilbab Outside Home

Also in surah *Ahzab*, there is instruction for both the holy wives and daughters of the Prophet and the Muslim women with regard to the etiquette of stepping out of the house.

يٰٓاَيُّهَا النَّبِيُّ قُلْ لِّاَزْوَاجِكَ وَ بَنٰتِكَ وَ نِسَآءِ الْمُؤْمِنِيْنَ يُدْنِيْنَ
عَلَيْهِنَّ مِنْ جَلَابِيْبِهِنَّ ؕ ذٰلِكَ اَدْنٰٓى اَنْ يُّعْرَفْنَ فَلَا يُؤْذَيْنَ ؕ وَكَانَ
اللّٰهُ غَفُوْرًا رَّحِيْمًا ○ (الاحزاب:۵۹)

"O Prophet! Tell thy wives and daughters, and the believing women, that they should cast their outer garments over their persons (when abroad); that is most convenient, that they should be known (as such) and not molested. And Allah is oft-forgiving, most merciful."
- Al Quran - 33: 59

The order to use '*Jilbab*' while going out of the house is there in this verse. 'Jilbab' is a large piece of cloth or chador that comes in handy to cover the whole body. Its use will proclaim that the bodies concerned are blue-blooded, spotless in character, and highly chaste. Consequently, they will not face eve teasing or molestation.

Ghaz-e-Basar: Lowering the Gaze

Surah *Noor* too, discusses *Hijab* regulations.. It begins with the command of Ghaz-e-Basar, which implies keeping low the eyes and avoiding unlawful eye contact with Non-Mahram (people of opposite sex not allowed to intermix). Quran records:

قُلْ لِّلْمُؤْمِنِيْنَ يَغُضُّوْا مِنْ اَبْصَارِهِمْ وَيَحْفَظُوْا فُرُوْجَهُمْ ؕ ذٰلِكَ
اَزْكٰى لَهُمْ ؕ اِنَّ اللّٰهَ خَبِيْرٌ بِمَا يَصْنَعُوْنَ ○ (النور:۳۰)

"Say to the believing men that they should lower their gaze and guard their modesty: that will make for greater purity for them: and Allah is well-acquainted with all that they do." *-Al Quran - 24: 30*

The waywardness of the eye is the first step towards immorality and sexual indiscipline. Lowered looks elevate morals. The way to piety, purity and virtue becomes easier. This is the reason Quran mentions lowered looks and guarding secret parts together, and thus highlights intimate connection between the two.

The instruction to lower the gaze is applicable to both men and women. In the following verse, Quran orders women to do so. This is to ensure that their adornments and charms are not on display for everyone.

قُلْ لِّلْمُؤْمِنٰتِ يَغْضُضْنَ مِنْ اَبْصَارِهِنَّ وَيَحْفَظْنَ فُرُوْجَهُنَّ وَلَا يُبْدِيْنَ زِيْنَتَهُنَّ اِلَّا مَا ظَهَرَ مِنْهَا وَلْيَضْرِبْنَ بِخُمُرِهِنَّ عَلٰى جُيُوْبِهِنَّ ۖ وَلَا يُبْدِيْنَ زِيْنَتَهُنَّ اِلَّا لِبُعُوْلَتِهِنَّ.. (النور:٣١)

"And say to the believing women that they should lower their beauty and ornaments except what (must ordinarily) appear thereof; that they should draw their veils over their bosoms and not display their beauty except to their husbands...." *-Al Quran - 24:31*

Instruction concerning Mahram

The remaining part of the verse quoted above lists seven close relatives before whom it is not objectionable to display ornaments. They are father, father-in-law, son, stepson, brother, nephew (brother's son), nephew (sister's son). Islam terms these relatives '*Mahram*' with whom marriage is forbidden. Father's younger brother(s) elder brother(s), and mother's brother(s) are also included in the category of '*Mahram*'. Similar is the case of all those who become relatives because of sharing breast milk.

In this verse, permission is granted for the display of ornaments before the following members: other ladies at home

and in the family, and in the neighbourhood, female acquaintances and friends provided they are their peers in faith and morals (Nisaihinna), slave-girls, and such servants with no interest in women, and minors.

Husband and wife have conjugal relationship. Hence, the *hijab* regulations are absent between them. Their bodies in their entirety provide sensual pleasure. With regard to other relatives and people mentioned above, the extent of the display of ornaments and the nature of the relationship as well as the factor of age will determine the degree of informality.

The Etiquette of Deportment

Towards the conclusion, of the verse, there is advice for women not to display their ornaments while walking.

وَلَا يَضْرِبْنَ بِاَرْجُلِهِنَّ لِيُعْلَمَ مَا يُخْفِيْنَ مِنْ زِيْنَتِهِنَّ ط وَتُوْبُوْٓا اِلَى اللّٰهِ جَمِيْعًا اَيُّهَ الْمُؤْمِنُوْنَ لَعَلَّكُمْ تُفْلِحُوْنَ ○ (النور: ٣١)

"They should not strike their feet in order to draw attention to their hidden ornaments. And o ye believers! Turn ye all together towards Allah, that ye may attain bliss."
-Al Quran - 24:31

Hijab is unacceptable to the so called Modern Age

These precepts with regard to hijab are antediluvian in nature and very unacceptable to the ethos of modern age. They look upon them as inimical to women's liberation and roadblocks on the path of progress. In view of the radically changed circumstances and new requirements, woman is duty bound to break these shackles to keep pace with modern times, meet their requirements and scale new heights. Such is the outlook of modern age.

The Inclination of Discarding Hijab was Deliberately Created in Woman

One of the cultural peculiarities of the modern age is that it

has created the trend of impudence and immodesty (informality and lack of feminine decorum in dress) among women. With the vehemence with which this trend forced forward its way in society, her scantiness of dress also took bold jumps ahead. Her exposure of the body is a source of sensual pleasure to man. Therefore, he neither objected to, nor imposed any restrictions on it. Rather, he emboldened her and gave it a fillip. He deeply instilled in her mind that her beauty and elegance should expose to view (for appreciation and applause). It is insulting to her charming personality that she prudishly conceals her physical charms. Her seclusion and concealment of charms in the presence of the opposite sex is unnatural. Her dress should not hide her elegance of form, but make it more attractive by artifice. Therefore, she should dress more to reveal her figure than to conceal it from the view of the admirers to make her more attractive to them. Man's dormant passions may be excite and he may be drawn to her impatiently. The dress found lacking in this aspect of allurement is not befitting her graceful body. This resulted in such bold steps in mini-dressing and peculiarly revealing designs that hardly left anything to imagination where the body curves and prominences were concerned. She began to expose shamelessly the one-time uncovering of which was considered most improper. It may not take long for her to discard boldly the few remaining shreds. It appears even this burden is too much for her and she may get rid of them any day now. Propaganda in favour of perfect nudity is afoot and people are seeking arguments in its support calling it the true human nature (sullied by unnecessary items of dress). Moreover, the most powerful is the practical argument since she has already sufficiently advanced towards nudity. Perhaps in man's recorded history, human nature has never faced with temerity so much insult.

Man's Dress is more Formal

The modern age had made immodesty an art and created in

its support an atmosphere that the woman cheerfully threw away her armament of modesty and started moving about half-clad. However, the strangest happening is that there was no change observed in the dress of man. There was no move towards immodesty on his part. Rather he himself is taking to more and more formal dress with the passage of time and the so-called advancement in culture. He himself dresses in keeping with the changes in the weather conditions, but does not allow the poor better half to cover her whole body even in chilly winters. His own dress is loose enough to be comfortable, but he induces her to put on skin tight and troublesome dress, which permits exact measurement of her physique. He himself puts on clothes of the extremely rough and thick textured fabrics and nobody seems to mind it. Nevertheless, the designers and dressmakers offer woman clothes thin and almost transparent to reveal her skin. This is a strange contrast between the dresses of the two sexes and their attitude towards them. Still, the woman fails to realize this contradiction. Whereas a man fully, if not over-clad, takes his almost unclad collaborate out in the open market places and other public gatherings. She ought to have rebelled against this attitude. She has, due to her simplicity and short sightedness, taken to it as a demand of the present day culture. Instead of hanging her head in remorse, she raises it out of pride and a sense of superiority and with all her blandishments, and collaborates with him.

In this atmosphere of informality in the matter of dress, if a woman observes the Islamic limits and keeps her body concealed from the prying looks of strangers, she makes the blood of a lascivious person boil. She appears to him as a walking corpse, which fails to provide his eagerly wandering gaze the morbid pleasure he is after, everywhere.

Let us now examine the arguments put forth in their opposition to *Hijab*.

Hijab and suppression of Natural Passions

One of the argument put forth, which, truth to tell, has hardly any strength in it, that Hijab, intervening between man and woman, puts an unnecessary check on their passions, which remain suppressed and resulting in various psychological complications. In addition, they also claim that such checks on natural passions and the consequent suppression have violent reaction in the form of an outburst with dreadful consequences. However, this absurd and meaningless philosophy is totally against human psychology. Experience negates it. The experiments performed in the West itself have convincingly proved that due to immodesty in dress and free mixing of sexes passions are inflamed and illicit sex becomes rife. Therefore, we find that free sex is becoming the un-healing sore of the Western society. The ruination of once-happy families is common, moral values are downtrodden and physical, and psychological diseases too are becoming common due to this sex-anarchy. It has shaken the very foundations of Western culture. After witnessing these dreadful consequences, no right-minded person should abstain from becoming a supporter of hijab and supporting modesty and preaching this cult. If this Islamic Law of hijab had not existed, he would have found himself compelled to enact one and try to make men and women follow it.

Is Hijab an Impediment to Progress?

The general comment is that hijab or purdah is an obstacle for women in the way towards progress. This has left her weighted down by penury and she is a victim of decline and decay. She finds herself practically cut off from political and social life. Women who are free from this stricture have gone far on the road to progress.

However, the difficulty is that it is not the only one hurdle. So many other factors are stated to be our fetters where march on the road to progress is concerned. To some of them the entire

familial system is a great drawback. It confines the poor woman to the four walls of the house. Some others regard the Islamic devotional acts as barring the way of the Muslims towards progress. Salat or prayer interferes in the most suitable working hours. Fasting tells upon the health, and Hajj involves waste of time and money both. Poor Muslim! He is at a loss to decide whom he should listen to, and whose advice should he overlook and ignore? Obviously, he can please only one of them. Others are sure to be annoyed. Formality apart, many intellectuals consider Islam itself the greatest hindrance to the progress of Muslims. Yet, the compulsion of a common Muslim is that he, notwithstanding his manifold infirmities and shortcomings, is not prepared to give up Islam.

Again, if the progress of woman alludes to that which she has made in immodesty, dance, music, and the like in the name of fine arts, her performance is certainly wonderful and she is at the "peak of glory and fame" in her own circle. Nevertheless, to attain these heights of progress and fame she had to sacrifice the high values like modesty, chastity, kindness, love, obedience and loyalty. For, without sacrifice of these exalted values, progress would have been impossible. Islam in this behalf has a particular viewpoint. To it progress is that which creates in man human qualities of a high order. The progress that destroys those values is not progress at all. (It is abysmal degeneration).

It is an admitted fact that woman has, quite apart from this, made progress in various sciences and arts too, and has rendered valuable services in the field of learning and research. Some people labour under the erroneous notion that such progress is not possible with restrictions of *hijab*. However, this misunderstanding emerged from the pervading atmosphere where *purdah* and modesty are conspicuous by their absence. This 'apparently glaring' atmosphere intimidates the onlookers positively and it becomes difficult to understand as to how a woman can make progress in a perfectly clean atmosphere. This

progress is not indebted to absence of *purdah*. There are other factors responsible for it.

Firstly, the great success that some women achieved in some field was the fruit of their untiring effort, constant struggle, and their sincerity of purpose. We must sincerely appreciate their merit. It is the divine law that those working with sincerity and devotion achieve reward and success.

Secondly, the present day culture is a shameless one. It provides facilities of sciences and arts only to such women as have the audacity to throwing away their *purdah* and taking their stand with the immodest lot. In this way, they have practically barred the paths of progress to the women who stick to their *hijab*. Progress does not depend on *hijab* or absence of it, but is closely associated with the facilities offered to women. The experience of the present age too bears testimony to the fact that the *purdah*-observing women made progress in keeping with the available facilities for their efforts, not lagging behind women outside the *purdah*-limits.

Yet again, this generalization is true only of women who within the limits of *hijab* might have failed in making progress. It is an undeniable fact that the women discarding the limits prescribed for them by Islam, did not achieve any success worthy of pride for the *Ummah*. Moreover, nobody heard of any 'Ayeshah, Umm-e-Salmah, Asma' bint-e-Abu Bakr, Fatimah bint-e-Khattab or any Khansa' r.a.a. taking birth in the Muslim *ummah* today.

Within the Islamic limits, women, on the one hand attained the highest position in knowledge and learning, and on the other, were not totally dissociated from the political and social trends of the times. Rather they left their mark on them.

Furthermore, along with all these remarkable endeavours, their laps nurtured such worthy sons and daughters who proved to be the glory and pride of history. Several strong pillars of learning

and knowledge, and eminent leaders of arts received their training and upbringing at these (worthy mother's) hands whose beneficence in the fields of learning and culture, humankind can never fully acknowledge with gratitude. Was all this the performance of ignorant and unlettered women?

The Discussion of the Limits of Hijab and Erroneous Inference from it

In the face of the objections raised against *purdah*, people in their bewilderment at once start with apologetic explanations, dragging the *maulvis* in their disputes as scapegoats and asserting that in it is they who in the name of *purdah* impose all sorts of restrictions on women, while Islam is against such impositions. They go on to extent the liberty that Islam provides in exempting the face and hands of women from *purdah* and she can expose them before strangers (under specific conditions) to the freedom of the modern woman.

There is only this much truth in it that the jurists have differed in the matter of exposure of woman's face and hands. Even if one takes it for granted that she can expose these two before non-*mahrams*, one cannot justify the permission by Islamic law of the freedom enjoyed by the women in the present day permissive atmosphere.[1]

Islam looks at the relationship of man and woman from a peculiar viewpoint of which hijab is an important part. This viewpoint is diametrically opposite to the modern trend of thought and clashes with it at every step in life.

Islam has recommended to the woman to take her home as the real centre of her attention and activity. It does not like that

1. The author has discussed the Islamic Laws governing hijab in one of his articles contributed to the Urdu monthly 'Zindagi' Rampur, in which the arguments put forth by those who insist on the exemption of the face and hands of a woman from the restriction so purdah have been examined in detail and preference given to those who include her face too in hijab, and she can expose them before the alien only in case of a pressing need. See Zindagi, Vol. XX, 2-3, March-April, 1958

she should step out of it without a pressing need. The modernists are not prepared to admit that she confines her activities to the four walls of her home. Islam is dead against mixing of sexes, whereas it is the essential element of the modern mode of living. Islam has ordained immediate lowering of gaze and the modern thought is totally devoid of any such concept of. It is possible this much regard of "purdah" (sudden reaction on his part) may be considered deprivation of a pleasure coming his way. Islam regards free mixing of men and women during the courses of education and training, games and field events etc. detrimental to their morality, when it is a fact that in the present set-up it all rests on free mixing of both sexes, a deemed merit. Islam instructs women to keep to the side of the road (taking the footpath if there is one) to avoid collision with men. Even while performing devotional acts, Islam commands to keep a safe distance between the two gatherings (men and women), when it is a well known fact that the existing order cannot put up with this discriminatory treatment of women and wishes to see them shoulder to shoulder with men, on the roads, market places, offices and social gatherings. The fact is, it is not the hijab alone that vexes her. Rather without violating many definite ordainments of Islam, the Muslim woman cannot participate in the struggle of life with the freedom of a modern woman.

The existing order invites the woman to a life free from all restrictions and hurdles, whereas Islam declares that moral limits and observances are essential (as a part of her belief and Faith and not as mere sound advice). The destination and end of both is clearly before her and she can very easily decide her direction and her destination.

Chapter 6

The Economic Problem of Woman

The Economic Pursuits of Women

It is said in Islam women do not enjoy freedom of economic effort, whereas it is a woman's natural and basic right to endeavour freely in earning her livelihood and take part just like men in industry, trade, agriculture, or any economic field she likes. Without it she cannot succeed in stabilising her economic position, remaining helplessly dependent on man she can find no respectable position in society. This philosophy brought together the two separate fields of man and woman in the economic efforts making them joint ventures and the one time secluded woman joined hands with man for economic endeavours. The east, hesitant and sluggish earlier, is now not far behind in the race. This brought disastrous consequences. The West, long enough in this race and is feeling the pinch to some extent but its oriental counterpart in the enthusiasm of novices is not conscious of it to any appreciable extent.

The Weak versus the Mighty

Here one overlooks that women belong to the weaker and the fair sex. She cannot take to hard and labour-consuming work, and to cast on her the burden of that type of work for which she is not physically and mentally fit would be an excess. So long as she is young, she has to put up with menses, pregnancy, delivery, breast feeding, suckling and other attendant jobs. These natural processes tax her health and reduce her working capacity. These various stages of reproductive activity take care of the youth and soon she enters old age. Her energies are now at low ebb (having spent them in the sacred mission of continuity of the race entrusted to her). The modern age behaves in a peculiar contradictory

manner in dealing with her. It declares her fit for every job on a par with men. However, when it comes to the brass tacks it is a different story. There, in practical life, the turnover produced and the amount of solid work calculated in terms of person hours determine her performance -the weaker sex getting wages proportionate to the amount of labour put in - Is not the discrimination pure, simple, and evident? She usually gets employment for lighter jobs and not considered fit for complex and difficult ones. Most of the shops have sales girls (to attract a larger number of customers), clerks, typists, secretaries, and receptionists are girls (for both work and embellishment). A little higher in scale, there are woman teachers, social workers, airhostesses (mostly for the amusement of the air-borne passengers), nurses, doctors and engineers. In administrative jobs, they are rare. Until lately they were scarcely to be found in the capacity of police officers, in the defence forces, land, air and navy (amateur pilots are exception). People do not entrust them with heavy machineries. They do not drive heavy vehicles (railway engines, heavy trucks and bus driving) are exclusively men's jobs, because her nerves go jittery in handling them (particularly in a critical situation). Even for delicate surgical operations as also those fraught with danger when handled by lady surgeons, is a senior male surgeon standing by to take over in a critical situation like excessive bleeding or threatened respiratory and cardiac failure. It is disgraceful that the private concerns pay women at a lower rate of remuneration due to poor working capacity in face of the legal restrictions on them in those countries where discrimination in wages based on sex is a crime.

The Result of Her Large Scale Competition and Struggle with Man

Woman's entry in the field of economic effort created sort of a struggle (due to jealousy) with man. There was no love lost between them. Instead, they were in the opposite camps and

behaved no more as allies but as aliens and adversaries. They competed in every field, trade, agriculture, industry and services as rivals, each one in turn trying to push out the other. However, this was after all a tug of war between the stronger and weaker sex; the man due to his superiority in so many ways, was advantaged in the competition against her and she had to give way. So the leadership of nations is today in the hands of man as of old. High ranks and positions of great power and influence are his domain. He pervades all the departments of life almost exclusively. Let alone the question of surpassing him, she could not claim to be on the same footing with man. Exceptions never contradict the rule. Such examples were present in every period. They are not peculiar to the present age.

The Women's Balance Sheet of Loss and Gain

One may claim that the economic condition of woman is much better than before and she is advancing towards self-sufficiency and economic stability. This is true, but one cannot overlook either that for the sake of her economic uplift, she is making the greatest sacrifice - that of her Faith and morality and she, compelled by circumstances, has to present herself to every customer as an unsalable commodity. For a paltry gain, she has had to lower her dignified position, and at the cost of her honour and prestige has to become a source of earning wealth. Today man holds the keys to trade, industry, factories and mills, markets, big five star hotels, picture halls (the entire cinema industry) and great clubs including the notorious night ones, are all under his sway. In this way, the financial resources are in his possession and the woman is just one factor to promote his widespread business. Man is using her to develop and promote his trade and for the roaring publicity of his goods. It has come to this deplorable state of affairs that every article of trade, any manufacture, high-priced or lowly, must have an alluring picture of a woman, half-clad or nude, and the picture must appear on it to lure the intending

customers, even when it has nothing to do with her. Shop windows, placards and the huge notice boards any city walls, particularly cinema hall-fronts are all radiant, it appears, only with her saleable charms!

Moreover, it did not remain limited to the posters and labels. She was brought in person, with all her charms, natural, and artificial (make-up aid, clinging, revealing dresses and embellishments) to help sell the manufacturers' articles like hot cakes. She is there to welcome his customers at the hotels and clubs, and to bribe and entertain them with her ready smiles and discotheques. She dances to his tunes with expressive actions and gestures to expose the body curves and at his bidding in times of need strips herself partially and then totally since it brings money to the master - the man. The fact is that perhaps never in known history had she degraded herself like this.

Is Economic Activity Essential for Woman in the Modern Age?

One argument supporting women's economic endeavours is that lately our necessities of life, our monetary needs, have gone up to an extent that man alone through his own efforts cannot meet them squarely and woman's participation, therefore, becomes necessary. Through their joint efforts alone, a family, however, limited, can solve its problems.

In this connection, we must keep in mind certain considerations.

1. In today's world, almost everyone has a fictitious standard of the life, which he impatiently strives to attain through frantic efforts. With this end in view, he thinks of adding to his reasonably large income through woman's efforts also. However, we should not forget that employment of every woman is not useful enough to add sufficiently to the family income. At the most forty percent of them may be in this

happy position. Moreover, for the majority of even this forty percent only the ordinary jobs are available due to a hard competition with the job-seeking men (since the "blessing of unemployment" is becoming a glaring feature of their "ideal economy" also). Therefore, even the purposefully employed women too can do little credit to the family in raising its standard of living. Here a question arises whether only the families with earning female members meet their needs while those not so advantageously placed face financial difficulties. Truth to tell, it is no hard and fast general rule that only with the additional earnings of the woman the family budget can become non-deficit.

2. In the present age, the list of necessities is not small. It is an expanding one with an equal number of luxury articles, if not exceeding the barely essential items, and is even awaiting completion. In a society dominated by constantly swelling consumerism - thanks to T.V., Radio, and business magazines advertising the latest and the loveliest, and in his quest to meet this ever-growing list of the latest magically advertised luxuries, he is practically running about at his wits' end. Human greed for more and more can end only with his life.

3. The modern age has created such an insatiable craving for economic competition that can stop nowhere. The remedy does not, however, lie in dragging the lady of the house into the streets, markets and business offices in quest of work to supplement the family income somehow. The true and effective remedy lies in a drastic change of man's mind in relation to this world and its paraphernalia, thus ridding him of the all consuming and never satisfied hell of greed and desire for more and more. Until there is such a healthy change in his thinking, one cannot solve this problem even if every member of the family, including children, works for the promotion of the family income.

4. The economic effort of the woman may add to the family

income, to some degree, but diverts her attention from the family affairs and domestic responsibilities, and she cannot attend to them in the natural way. Careful and considerate homemakers through their beautiful planning can bring down the domestic budget to an appreciable extent. Switching her attention in any other direction makes it topsy-turvy (due to lack of proper supervision and waste and thefts by the servants) and her earnings are practically of little help in the improvement of family finances in the face of this continuing waste at home.

5. Owing to the economic activity of the woman, the peace of the household is disturbed. Differences crop up between the husband and the wife, and the children are left uncared for, resulting in the lack of their proper training. The experience and observations of the Western society tell us that the entire system goes out of gear. The very pertinent question that arises is whether the woman's earnings are so valuable that for their sake she herself, the householders, and the society in general may put up with such a heavy loss.

Islam gives Prime Importance to Women's Household Responsibilities

Islam acknowledges the importance of man's livelihood and economic activity. In addition, it also earnestly demands that a woman continues performing her household duties undisturbed, and any occupation with her work outside may not compel her to neglect them. To this end, it holds man responsible of earning the family's bread, thus freeing the woman to look after her family and household affairs with undivided attention. This division of labour on a reasonable basis is sure to guarantee greater cooperation between them and in making the home perfect and peaceful.

Maintenance of Wife is Obligatory on Husband

That is why, in Islam, it is obligatory on the husband to

provide maintenance for his wife. This finds mention in the Holy Qur'an in versions contexts. (Al-Baqrah, 233, At-Talaq 6, 7)

In his Last Hajj sermon, the Holy Prophet (peace and blessings of Allah be with him) described this obligation of men in the following words:

ولهن عليكم رزقهن و كسوتهن بالمعروف

(مسلم، کتاب الحج، باب حجۃ النبیؐ)

Providing food and clothing for your women, according to norm is obligatory upon you.

(Muslim, Kitabul Haj, Babo Hajjatinnabie)

There is consensus in the Muslim Ummah upon the maintenance of wife. In the eyes of a majority of scholars it means that the basic needs of the wife must be fulfilled.

(Ibne Hajar, Fathul Bari, 9/403)

Maintenance mainly includes food, clothings and house. If the husband is a well-off person, apponintment of a servant (or a maidservant) also comes under its purview.

Whether the woman herself is poor or rich, her maintenance is obligatory for her husband in every condition.

(Qudoori Ma'a Hidayah, Babun Nafaqate)

The Economic Position of Woman Is Stable

Owing to her single-minded devotion to household responsibilities, Islam did not allow her economic position to weaken, rather, stabilized it more than that of man.

For this purpose, it undertakes two legal steps:

1. She does not own any economic responsibility. She is not responsible for the support of her own children, her father or any other relation. In fact, she does not have to support even herself. In childhood and early youth, her father looks after her upkeep, and after marriage, it is the responsibility of her husband. If the offspring is not in a position to look after her, father or any other

eternally prohibited relative has to bear her burden.

2. She receives a share in inheritance. She must get her share in the inheritance of the father, husband, and offspring. In certain situations, she also becomes entitled to a share in the property left by her brother and sister. Similarly, she gets her dower from her husband. She is also the undisputed owner of all those ornaments and other gifts that she receives on the auspicious occasion of marriage. All these are her safe assets.

In the absence of any burden on her, the income from these sources goes on accumulating with her, whereas the heavy responsibilities to which he is liable take away most of man's earnings, leaving little or nothing by way of savings with him.

In this way in the Islamic order of familial laws, a woman is not under any compulsion to leave her home, leaving its affairs to take care of themselves. In addition, she is able to safeguard her from the evil consequences of social and moral ills resulting from her joint economic ventures with man. Staying in the safest asylum also protects her from hungry glances and evil intentions of the lascivious and the dissolute.

Certain Limitations on Her Economic Pursuits

However, it does not mean that Islam imposes restrictions on woman's efforts outright amounting to total ban and commands her to rest content with what little she gets as her share of maintenance from her husband. Rather, what needs to be impressed in this context is that Islam relieves her of her own and others' responsibilities. Though, if in spite of that freedom (from responsibilities), she insists on such a venture she is free to do so. However, Islam lays down certain conditions as a code of conduct for her to observe strictly in every economic effort, she undertakes. She is free totally in the field of her striving and the instructions to that effect are as under:

1. A woman is essentially responsible for the management of

her household. She is the protector of her husband's property and the caretaker of the children. Therefore, it will not be permissible for her to take to any trade, which will obstruct or totally prevent her in performing her prime duties and discharging her responsibilities.

2. In the familial system of discipline, she is subordinate to her husband and can undertake any economic effort only in consultation with her husband or with his express permission. For, if she devotes her time and energy to anything outside the normal sphere of activity, her household programme must receive a jolt, a setback, one way or the other due to lack of proper attention. In extreme cases, the home may be ruined.

3. She is not allowed to enter any business or trade where free-mixing with men is unavoidable, since the damage caused to her by moral lapses and other much more serious evils resulting from such contacts, is of much greater concern to a pious Muslim woman than the expected monetary gains accruing to her from this hazardous business or trade. Material gains cannot atone for the moral losses!

With due regard to these restrictions, we should rather call them the safety limits, she can enter any permitted business or earning proposition, depending, of course, on her age, state of health, circumstances as also the opportunities that offer themselves. Islam does not obstruct her path here. Similarly, she can invest all the capital at her command in any gainful business within the Islamic limits. The gains accruing from such investment are hers exclusively. No one can put forth any claim to her honestly earned wealth.

In the present day world with these Islamic safety limits imposed on her, economic efforts on the part of a Muslim woman are not likely to suit her. As is well known, the entire economic order is in the hands of those who regard free mixing of sexes not only a necessity but also the most elegant feature of modern

business. Moreover, they are putting up with the ruination of the families, though willy-nilly. The weak point and a great drawback of Muslim society is that it has, to date, no economic set-up offering opportunities of economic effort for women, being at the same time free from the hazards of moral evils inherent in the existing social order. This deficiency and shortcoming of the present day Muslim society must improve at the earliest.

Chapter 7

The Nature of Dower and The Rules Governing It

Dower is not the Purchase Price of Bride

Sometimes dower finds a sarcastic mention as the price paid by the husband for the bride. That clearly indicates ignorance about the nature of *mahr*. To Islam, woman is not a commodity, which one may purchase or sell. She has an independent identity of her own. She is not the property of her parents or any other guardian who can sell her. If she had been their property and they could sell her with *mahr* as her cost, the amount coming from the groom would have accrued to them. Whereas, according to the Islamic law *mahr* is the due to the bride herself. Nobody can claim it or even a portion of it. Again, if the husband had purchased her against mahar, she would have been his property when actually the '*nikah*' or wedlock does not make the husband her master having proprietary rights over her. After marriage, too she retains an independent identity of her own.

The Nature of Mahr (Dower)

Let us now examine how the Qur'an presents dower. In surah Nisa', after a detailed mention of people with whom Islam forbids marriage, it declares:

وَأُحِلَّ لَكُمْ مَا وَرَآءَ ذٰلِكُمْ اَنْ تَبْتَغُوْا بِاَمْوَالِكُمْ مُحْصِنِيْنَ غَيْرَ مُسٰفِحِيْنَ ط فَمَا اسْتَمْتَعْتُمْ بِهٖ مِنْهُنَّ فَاٰتُوْهُنَّ اُجُوْرَهُنَّ فَرِيْضَةً ط (نساء:۲۴)

"Thus hath Allah ordained (Prohibitions) against you: Except for these all others are lawful, provided you seek (them in marriage) with gifts from your property,

desiring chastity, not fornication, give them their dowry for the enjoyment you have of them as a duty;"
- Al Qur'an IV: 24

We learn the following lessons from this verse:

1. Barring the forbidden women, one can seek others in marriage.

2. For this purpose, it is necessary that a man must seek their hand against his substance.

3. Seeking a woman should be with the purpose of nikah (clean and chaste relationship in sanctified wedlock and not fornication or illicit sex, outside wedlock). The difference between the two lies in the fact that in fornication, man after casual gratification of his lust, leaves the woman to fend for herself when its dreadful consequences come to the surface in which predicament he remains aloof and completely unconcerned. As against this dastardly selfish and cruel attitude, the *nikah* intends to bind husband and wife together in a stable relationship, which shall be abiding. Both shall meet the mutual obligations and responsibilities of conjugal life.

4. The context of the verse also reveals that it is mahr that differentiates between *nikah* lawful wedlock and *Safah* (illegal gratification of lust), since one of the financial responsibilities of man to the woman is *mahr*, her lawful right, which a man must pay to her. In case of momentary pleasure of illicit sex, man undertakes no such responsibility.

5. *Mahr* is the return of the benefit that man derives from the woman through the bond of nikah: The Quran says:

فَمَا اسْتَمْتَعْتُمْ بِهِ مِنْهُنَّ فَآتُوهُنَّ أُجُورَهُنَّ فَرِيضَةً ط (نساء:۲۴)

"Give them their dowers for the enjoyment you have of them as a duty." *- Al Qur'an IV : 24*

Zamakhsari says that the Qur'an has called *mahr* the return for man's deriving benefit from the woman, because the *mahr* is

the return for the sexual gratification of man with the woman.

(Al-Kashshaf 'un Haqae-qit Tanzeel)

The Hanafite jurisprudence defines mahr in these words:

انه اسم للمال الـذى يجب فى عقد النكاح على الزوج فى مقابلة البضع اما بالتسمية او بالعقـد (حاشیہ الصاوی علی الشرح الصغیر: ۲/ ۴۲۸)

"Mahr is that amount of man's substance which in the case of nikah the husband is liable to pay for the gratification of his sex urge. This may become obligatory through the fixation of mahr and also through wedlock." (Al 'Inayah 'alal-Hidayah, Vol.2, p.434)

This makes it evident that mahr entitles man to, and makes it lawful for him to gratify his desire, but it does not make her his property (purchased with mahr). Undoubtedly, the woman too derives sexual pleasure from the sex act, but that does not make her liable to pay anything like mahr, because Islam does not like to throw the burden of any financial responsibility on the woman. It has kept her free from all such obligations.

Mahr is the Proof of Sincerity and Honesty

Mahr has been termed return or the wages since she gets it against nikah, which denotes her legal position. However, the Qur'an has used for it the words 'Sadaqah' and "Sidq" also for it, which interprets its spirit. The Qur'an says:

وَاٰتُوا النِّسَآءَ صَدُقٰتِهِنَّ نِحْلَةً (نساء: ۴)

"And give the women (on marriage) their dower as an obligation." *- Al Qur'an IV: 4*

The word "*sadaqah*" and "*Sadaq*" have been derived from "*Sidq*", which is an Arabic word with a very wide connotation including sincerity, love, friendship, sticking to one's word, to come up to the expectations of people, to prove one's mettle in trial etc. (Ibn-e-Manzoor, Lisan-ul-'Arab, root S. D.Q)

The word *sadaqah* used for *mahr* is very meaningful.

Allamah Savi a malikite jurist, records: "Sadaqah is a derivative of *sidq*, which is the antonym of '*kizb*'. Quran uses it for mahr, since its existence between the husband and the wife is proof of the fact that they are at heart bound by the *Shari'ah*.

(Hashiyatus-Savi 'alas Sharahis-Sagheer:2/428)

Mullah Jeevan Hanafite says:

"This is a proof of sincerity and truth in the husband's love." (Tafseerate Ahmadiyah: p.129)

The fact is that dower is a token of a husband's sincerity and love, and a declaring it the price of the bride is an insult to that sincerity. Through payment of mahr, a husband proves that he will live up to the woman's expectation of her good faith and shall not deceive her.

Mahr is a Free Gift

Another word '*Nihlah*' also appearing in the original Arabic text is just as meaningful, expressing the passion behind the payment of dower in a much better way. This word literally has three meanings according to the lexicologists and there is room for all the three to fit in here all together.

1. The first sense is Faith and religion meaning thereby that the dowers of women must be paid as a religious duty binding on you legally with answerability Here and the Hereafter.
2. Paying it cheerfully, meaning that one should pay it without any expressive demand for it from the wife. There should be no dilly-dallying in this payment, for in that case it does not remain "Nihlah" (something paid cheerfully as a religious duty).
3. To pay as a gift in the sense that the husband does not take anything in return for it. As for the benefit of sexual enjoyment, they both derive it and stand on an equal footing with no obligation on either side. The following words bring about the same sense:

ان اللّٰہ تعالی جعل منافع النکاح من قضاء الشھوۃ والتوالد مشترکاً بین الزوجین ثم امر الزوج بان یعطی الزوجۃ المھر فکان ذٰلک عطیۃ من اللّٰہ ابتداء (تفسیرابن کثیر:۱/۴۵۱)

"Allah has made enjoyment derived from the sexual act and producing offspring common to the husband and the wife. (Neither one benefits alone). Along with that, He commanded the husband to pay dower to the wife. It is as if it were a gift from Allah at the commencement of conjugal relations of a man and a woman." (Tafseer-e-Kabeer : 3/145)

Allahmah Ibn-e-Katheer comments on the above-mentioned meanings of the Qur'anic term "Nihlah" in the following words:

ومضمون کلامھم ان الرجل یجب علیہ دفع الصداق الی المرأۃ حتما و ان یکون طیب النفس لذالک کما یمنح المنیحۃ و یعطی النحلۃ طیباً بھا کذالک یجب ان یعطی المراۃ صداقھا طیبا بذٰلک (تفسیرابن کثیر:۱/۴۵۱)

"The sum total of these expositions is this that it is the bounden duty of man to pay to his wife her *mahr* cheerfully just as one offers a gift to somebody."
(Ibid.1/451)

Notwithstanding the fact that the dower of a woman is her due, the way it is advanced is a "*Nihlah*" or a gift. Her maintenance likewise is termed "sadaqah" though it to is of a binding nature. Commenting on the meaningfulness of these terms, *Allamah Ibn-ul-Munayyar* says:

تسمیۃ النفقۃ صدقۃ من جنس تسمیۃ الصداق نحلۃ فلما کان احتیاج المرأۃ الی الرجل کاحتیاجہ الیھا فی اللذۃ والتانیس والتحصین و طلب الولد کان الاصل الا یجب علیہ شئ الا ان اللہ خص الرجل بالفضل علی المرأۃ بالقیام علیھا ورفعہ بذلک درجۃ فمن

ثم جاز اطلاق النحلة على الصداق والصدقة على النفقة

(فتح الباری:۹/۴۰۲-۴۰۱)

One terms '*Nafqah*' or maintenance, sadaqah, for reasons similar to those in case of giving the mahr the name of 'Nihlah'. Since for the sake of sexual gratification, affection and love, modesty, chastity, and natural urge for the offspring, just as the woman needs man, so does a man stand in need of the woman. When both enjoy an equal status in this respect, nothing ought to have been due from man. However, Allah conferred this superiority on man that he is her care-taker and hence a degree of ascendancy in his position. For this reason calling mahr 'nihlah' and maintenance as sadaqah is justified. (Fathul-Bari : 9/401, 402)

The Obligation of Mahr is Binding and Eternal

The above discussions might lead some to think that *mahr* or dower might have been regarded as a token of love in a particular period and it might have had some importance and utility at that time. However, the circumstances and social trends differ from time to time. The present day social values regard it as a negation of conjugal love. And practically also *mahr* has lost its importance in view of the fact that the woman is an earner of livelihood in her own right and does not look to any one for support.

There are two aspects to the above view for us to ponder. Firstly, what importance does the Islamic *Shari'ah* attach to *mahr*? Was it a provisional ordinance or is it of the nature of abiding laws and ordainments? Secondly, was the importance of *mahr* transitory, which has become ineffective with the passage of time or does it persist even today?

Where the *Shari'ah* comes in, it presents it as an ordainment of importance and utility. Earlier in the book, we quoted some Qur'anic verses. They are definite about its binding nature and there is no associated condition of time and the changing circumstances. The Qur'an has also ordained *mahr* definitely and

with great stress, and in detail elsewhere too. In every context, there is not the least hint to their being provisional. For, in that case there would hardly be any Qur'anic injunctions, which one can call an abiding law.

Islamic jurists unanimously opine strictly prohibition of *nikah* without *mahr*, even if a woman presents herself to him. Only the slave girl in one's lawful possession is an exception. Ibn Hajar r.a. says:

وقد اجمعوا على انه لا يجوز لاحد ان يطأ فرجا وهب له دون الرقبة بغير صداق (فتح الباری:۹/۱۶۷)

"It is not permitted to anyone to have conjugal relations with any woman without *mahr* except the one his right hand possesses. There is concurrence of 'ulama on this issue." (Fathul-Bari : 9/167)

Ibn Rushd says:

انهم اتفقوا على انه شرط من شروط الصحة و انه لا يجوز التواطؤ على تركه (ابن رشد، بداية المجتهد ونهاية المقتصد:۲/۱۸)

Among the conditions laid down for the nikah to be regular and lawful, mahr is also one and binding too. Concord on its abolition is not permissible. The jurists have consensus on this issue.

(Bidayatul Mujtahid wa Nihayatul Muqtasid: 2/18)

The nature of *mahr* is such that, if a person imposes a condition at the time of nikah that, he would not pay *mahr* or that, he does not mention it at all, even then, according to the Hanafites, it must fall due, since no one has the right to decide whether he will pay it or abstain from it. It being a divine injunction, a bounden duty or promise, he has to fulfil. Imam Malik r.a. has considers invalid the nikah in which the man has expressed the condition of non-payment of *mahr*.

(Al 'Inayah 'alal Hidayah : 2/434-435)

Utility of Mahr

Let us now consider its utility. If nikah makes lawful the private parts of a woman, *mahr* denotes the value of conjugal relationship. Man begins to feel that in order to enjoy the permission of the *Shari'ah*, he has to spend his substance on it. In addition, this feeling does away with the attitude of contempt towards the woman and with the erroneous notion that by accepting her as a life-partner and establishing relations with her he was granting a boon to her.

Mahr is also a means of keeping the conjugal relations intact. For, it is a psychological fact that he is not prepared to lose something on which he has spent his substance. Rather it is his endeavour to maintain it. Moreover, it is also a deterrent to divorce, since in case of divorce he will not only lose mahr paid to the divorced wife but also pay it afresh to the new comer as his life-partner.

There is also an aspect of the woman's comfort and satisfaction as well as financial aid. She can benefit thereby in meeting her needs, can spend it for a noble cause or invest it profitably in business.

As for the statement that in the world of today the avenues of economic effort are open to her and hence payment of *mahr* to her is hardly necessary, the question arises whether such facilities in the form of earning propositions are freely available to her to a degree where she has become totally independent of man? Moreover, taking for granted for the sake of argument, if it is really so, will it be beneficial to her to deprive her of the right of *mahr* because of earning facilities? Furthermore, the utility of *mahr* is not only financial but moral and psychological too. How can one overlook it?

(The economic problem of woman has been discussed in an earlier chapter)

The Quantum of Mahr

The quantum of *Mahr* is also an issue that comes up

repeatedly for consideration. Here we shall take it up for exposition. The Islamic *Shari'ah* has not fixed the quantum of *mahr*, leaving it to the social and economic condition of the husband and the wife, their familial traditions, mutual relations and trust. They can keep it very low if they are so pleased, and they are also permitted to keep it very high under their particular circumstances.

وَاِنْ اَرَدْتُّمُ اسْتِبْدَالَ زَوْجٍ مَّكَانَ زَوْجٍ ۙ وَّ اٰتَيْتُمْ اِحْدٰىهُنَّ قِنْطَارًا فَلَا تَاْخُذُوْا مِنْهُ شَيْـًٔا اَتَاْخُذُوْنَهٗ بُهْتَانًا وَّ اِثْمًا مُّبِيْنًا ○ (النساء:۲۰)

"But if you want to take one wife in place of another, even if ye had given the latter a whole treasure for dower take not the least bit of it back: Would ye take it by slander and a manifest sin?" *-Al Qur'an IV: 20*

It has been reported that 'Umar r.a.a., the second rightly guided Caliph, once advised the Muslim gathering not to fix very high *mahr* and wanted to limit it to four hundred dirhams. A woman in the audience raised the objection to his suggestion, saying that he had no right to make any such decision as it went against the definite teaching of the Qur'an. Then she quoted the relevant Qur'anic verses. On hearing this from her 'Umar r.s.a. remarked that a woman was right and 'Umar's decision was erroneous. (Fathul-Bari : 9/161)

The traditions have not prevented people from fixing higher quantity of mahr. However, Islam urges people to keep it low or moderate. One such tradition says:

ان اعظم النكاح بركة ايسره مؤنة (مسند احمد:۶/۸۲)

"The most blessed *nikah* is that which does not involve a heavy burden (i.e. mahar)."

(Musnad Ahmad : 6/82)

It is a historical fact that *mahr* was kept low during the period of the Prophet s.a.w. Therefore, we find Abu Hurairah r.a.a. reporting that during the Prophet's time it used to be ten ooqiyah or four hundred dirhams.

(Nisai, Kitabun Nikah Bab-ul Qiste fil asdeqate)

The *mahr* of the wives of the Prophet s.a.w. was 12 ½ ooqiyah or five hundred dirhams.

(Muslim, Kitabu-Nikah, Babus Sadaq, Abu Da'ood Kitabun-Nikah, bab-us-Sidq, Nisai : Ibid, Ibn Majah Abwab-un Nikah, babe Sidaq-in-Nisae')

Umar r.a.a. records: Do not fix large amounts as *mahr*. For, if it had been a symbol of honour and prestige in this life and of piety in the Hereafter, the Prophet s.a.w. ought to have been the foremost in fixing vast amounts as *mahr*. On the contrary, none of his daughters or wives had more than 12 ooqiyah as their *mahrs*.

(Abu Da'ood Kitab-un Nikah, bab-us-Sidq, Tirmizi Abwab un-Nikah, Babo MaJa' fi muhurin-Nisae', Nisai Kitab-un-Nikah, Bab ul- Qiste-fis-Sadqate)

An Ansari person fixed four ooqiyah or 200 dirhams as *Mahr* and the Prophet s.a.w. said: it appears this mountain consists of silver and you cut out pieces for yourselves.

(Muslim, Kitab-un Nikah, Babo Nadbe-man arada-Nikaha imra'atin)

Now the question is what is that minimum, which one can fix as *mahr* for *nikah*? Whether or not the *Shari'ah* prescribes any limit for it. The jurists are one on the norm that only such things as have any substantial value can become *mahr*. Therefore, something useless, with no substantial worth, cannot become *mahr*, and *nikah* is not valid against it,[1] since the Qur'an has declared it in clear terms:

وَأُحِلَّ لَكُمْ مَا وَرَآءَ ذٰلِكُمْ اَنْ تَبْتَغُوْا بِاَمْوَالِكُمْ (النساء:۲۴)

Except for them, all others are lawful, provided ye seek (them in marriage) with gifts from your property.

-Al Qur'an IV: 24

The Qur'an has decisively used the word 'property'. Therefore, a group of jurists are of the opinion that the way it can be a very large amount so can it be very meagre too. Unless it reduces to a limit, which nullifies its value as property, it shall be tenable as *mahr*. Imam Navavi has written that this is the opinion

1. Ibn-e-Hazm is the only exception in the matter and he has differed on this issue. According to him even a grain of wheat can become mahr, for it is not essential that mahr should have any price in terms of property or money. Nail-ul-Autar: 6/310-311

of Ulema of all the past ages and those of the recent times. This list includes Yehya bin Sa'eed, Abuz-Zannad, Rabia', Ibn Juraih, Muslim bin Khalid, Imam Laith, Imam Thauri, Ibn-e-Abi Laila, Imam Shafi'i, Da'ood Zahiri, jurists of Ahle-Hadith, Ibn-e-Wahab Maliki and others. (Nawawi : Sharah-e-Muslim, Vol. 1, p.457)

However, Imam Abu Haneefah, Imam Malik, Sa'eed bin Jubair, Imam *Nakha'i*, Ibn Shibramah and several others are of the opinion that the Islamic Shari'ah has fixed a minimum for mahr and it is not proper to reduce it further.[1] However, they differ on this minimum of the *Shari'ah*. Imam Abu Haneefah puts it at ten dirhams. Imam Malik says it is quarter of a dinar or three dirhams. Ibn-e-Shibramah has put it at five dirhams. Imam *Nakha'i* is reported to have fixed it at forty and according to some other reports at ten dirhams.[2]

Imam Shafi'i and those subscribing to his view offer a Qur'anic verse as an argument in support of their opinion:

فَمَا اسْتَمْتَعْتُمْ بِهٖ مِنْهُنَّ فَاٰتُوْهُنَّ اُجُوْرَهُنَّ فَرِيْضَةً ط (نساء:۲۴)

"Give them their dowers for the enjoyment you have of them as a duty." *- Qur'an IV: 24*

This shows that mahr is a return, which becomes due from men for enjoyment they have of women. People must settle it by mutual consent or it will not be in order. If one prescribes the amount of *mahr* before any mutual agreement, the concept of

1. In support of it the following Qur'anic verse has also been put forth:

قَدْ عَلِمْنَا مَا فَرَضْنَا عَلَيْهِمْ فِيْ اَزْوَاجِهِمْ (احزاب:۵۰)

We know what we have appointed for them as to their wives. *-Al Qur'an XXXIII : 50*

This shows that Allah has not only made it (Mahr) obligatory, but also prescribed its limit. Now we will have to obey His command in both these respects. If any one recognizes only acceptance of mahr and not its fixation, he refutes this meaning of the Qur'anic verse. Al Kifayah alal Hidayah: 2/59. This argumentation from this Qur'anic verse in my opinion is not clear and strong.

2. For details see Navavi, Sharah-e-Muslim : 1/457. Ibn-e-Hajar Fathul-Bari: 9/165.

return shall be no more, and Qur'an's purpose shall be defeated.

The other argument put forth by this group is a report quoted by Bukhari and Muslim, which records that a woman came to the Prophet s.a.w. and submitted that she was prepared to present herself to him, meaning thereby that he should accept her by entering a marriage tie. She remained waiting for a sufficiently long time but he (the Prophet s.a.w.) did not respond to her. Seeing him quiet, somebody in the audience said to him that in case he (the Prophet s.a.w.) himself did not want her let her be given in marriage to him. The Prophet s.a.w. asked him if he had anything to offer her as her dower in this contract. He replied that he had nothing except the sheet around his loins. The Prophet s.a.w. remarked that if he would give his loincloth to her, it would leave him without one. He should, therefore, go home and see if he can find anything to offer her, for example, an iron ring if there was nothing else. He tried to get something but failed, admitting to the Prophet s.a.w. that he could find nothing. The Prophet s.a.w. then asked him if he knew any portion of the Qura'n. He named some surahs (Chapters of the Qur'an) that he knew. The Prophet s.a.w. then pronounced his decision saying that in return for that much of the Qur'an (to be imparted to her) he gave her to him in wedlock.

(Bukhari, Kitab-un-Nikah, Muslim, Kitab-un-Nikah, babus-sadaq wajawaz-e-Kunah ta'leemul Qur'an wa Khatim-e-Hadeed)

From this tradition, some Islamic scholars derive that there is no limit to a minimum amount of *mahr*.[1] One may offer a whip, a pair of shoes, an iron ring or some such thing as mahr by mutual agreement.[2]

However, those scholars who think that there is a bottom line and *Mahr* cannot be less than that; have countered the above argument. We will present the Hanafite stand below.

The Islamic scholars of the Hanafite School argue that the

1. Ibn-e-Hajar says : "There is no limit to lowering the quantum of mahr." Fathul-Bari : 9/165.
2. Navavi : Sharah-e-Muslim : 1/457

nature of *mahr* (dower) is not merely that of mutual agreement between the husband and the wife. It has also an aspect of a devotional act in it. For, one may nullify any contract by mutual agreement, except *mahr*. The parties concerned cannot cancel it even by mutual accord. (Bedayatul-Mujtahid, 2)

Several explanations are available for this report. Firstly, 'Let it be an iron ring' does not mean that literally an iron ring can become the dower of a woman. Rather, it is a style of expression denoting that whatever one can give as *mahr* he should give, the minimum quantum of which, is however, specified. The other rejoinder to those shielding themselves with this tradition is that the spot payment of dower (*mahr-e-Mu'ajjal*) has been mentioned here. One should pay whatever is possible immediately, the rest remaining a liability. Supporters of this argument forward a custom of that period, spot payment of *mahr* and attach great importance to it. The third explanation offered is that the permission was specifically for that person and not a general rule. They also quote a tradition of the Prophet in its support. However, it is not in order. The fourth explanation is that aware of his knowledge of several Qur'anic Surahs the Prophet s.a.w. gave that woman in marriage to him in spite of his poverty and did not pronounce the quantum of mahr. However, the deferred *mahr* becomes automatically due from him, which he might have paid later. Nevertheless, all these interpretations are weak and are not duly applicable to the subject matter of the Hadith. (For details see Fathul-Bari : 9/167-168)

The basis for the stand of the Hanafite School is a report by Baihaqi:

لامهر دون عشرة دراهم

"Mahr cannot be less than ten dirhams."

Another report by 'Ali, quoted by both Dar Qutni and Baihaqi also support the same:

لاصداق اقل من عشرة دراهم

(سنن دار قطنی، کتاب النکاح، باب المہر۔ سنن بیہقی: ۷/ ۲۴۰ مطبوعہ حیدرآباد)

"The quantum of mahr cannot be less than ten dirhams."[1]

Those who believe in the quantum of mahr to have been specified have also conjectured it on the quantum of (property stolen) fixed for cutting the hand off the thief. According to Ahnaf it is ten dirhams. Therefore, they argue that the quantum of mahr should also be ten dirhams, since this quantum points to the fact that anything less than that cannot justify waste of a useful organ (which is normally immune like one's life). However, on one hand this nisab for cutting the hand off does not have consensus.[2] On the other, to draw analogy between the sexual enjoyment of a woman and the cutting the hand off a thief is a far-fetched analogy, rather a baseless conjecture. Cutting the hand off is a punishment for a crime and causes a defect in man. However, in gratifying the sexual urge, there is no concept of punishment inflicted on the woman, nor does she come by any harm or defect. Rather, it is a means of mutual love and the gratification of a particular passion. There is no common basis of analogy between the two.[3]

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1. Sunan-e-Dar Qutni, Kitab-un-Nikah, Babul-mahr, Sunan-e-Baihaqi, 7/240, Hyderabd Print.
   Both these reports are weak in authority. That by 'Ali is mauqoof since it has been reported from him by Sha'bi, when their meeting is not a proved fact. Also a reporter Da'ood 'Oddi has been declared weak. One of the reporters of the first hadith is Mubashshir bin 'Ubaid who has been declared banned by the traditionists. Imam Ahmad has declared his report concocted. Mubashshir bin 'Ubaid has reported it from Hajjaj bin Artat. The reports by Hajjaj bin Artat also are not authentic according to the traditionists. See Tuhfatul Ahwazi : 2/183. Dar Qutni ma'at-Taleeqil Mughni, p.392.
   Maulana Anwar Shah Kashmiri r.a. says that Imam Tirmizi has at several places praised Hajjaj bin Artat. The reasons offered by his critics for his weakness are not very important. This phrase of the Hadith has been quoted by Ibn Abi Hatim under a lengthy Hadith also. In this Hadith these two reporters do not come in. Hafiz Ibn-e-Hajar has written that according to him the tradition is not below the rank of "Hasan" (excellent). Faizul-Bari : 4/290-291
2. Maulana Anwar Shah Kashmiri r.a. says that the nisab for cutting off of the hand was also very small during the Prophet's period. Later it was fixed at ten dirhams, Faizul-Bari, 4/291
3. Ibn-e-Rushd, Bedayatul-Mujtahid : 2/19-20

This tradition clearly brings out the fact that the quantum of mahr has been less than ten dirhams also. Therefore, it would not be proper to fix it at a minimum of ten dirhams. Below we have furnished three examples of it:

1. Abdur Rahman bin Auf r.a.a. married an Ansari woman against one nawat of gold as her dower. When the messenger of Allah s.a.w. received this information, he said:

"May Allah bless you! Throw a walimah feast even if it is just one goat you can slaughter."

(Bukhari, Kitabun-Nikah, Babul-Walimah wa lau bi-shatin, Muslim, Kitabun-Nikah-bab-us-sidaq)

Nawat is the stone inside the date fruit. This word is used for five dirhams also. (Ibnul Aseer, Un Nihaya fi gharibil-Hadith, 4/184. There is some conflict about the meaning of the word "Nawat min zahab," but no one has assigned to it the meaning ten dirhams. In the text above the more acceptable view has been given. Ibn-e-Hajar, Fathul-Bari, 9/185-186)

2. Amir bin Rabi'ah reports that "a certain person married a woman of Fazarah tribe and gave her a pair of shoes as her dower. 'The Prophet s.a.w. asked the woman whether she was satisfied with that mahr and had given her consent to enter wedlock with him.' When she replied in the affirmative, he declared that match lawful." (Musnad Ahmad, 3/445, Tirmizi, Abwab-un-Nikah Bab Ma Jaa'fi Muhoorin-Nisae', Ibn-e-Majah, Abwabun-Nikah Bab Sidaq-un-Nisae')

3. Jabir r.a.a. reports the Prophet s.a.w. to have said, "If a person gives his would-be wife a handful of grain and she assents, that nikah is permitted." (Abu Da'ood, Kitabun-Nikah, bab Qillatil-mahr)

The first of these reports is to present in all the six most authentic collections of hadith *(Sihah-e-Sitta)* and hence its authenticity is unquestionable. The latter are rather weak, but still they are more reliable than the reports put forth in support of fixation of *mahr*. Moreover, they are supported by other reports too, which tell us that the principal parties concerned have the

right to fix the *mahr*, more or less as they are pleased. Whatever they agree upon is proper and lawful, however, meagre.[1]

The irrefutable fact is that the *Shari'ah* has not fixed the quantum of mahr but left it to the circumstances of every age, the financial and social status of the man and woman, their family traditions, mutual relations and trust on one another and the needs of the woman. If the intending principal parties so desire they can reduce it to a bare minimum. However, they have also the option to keep it high depending on their financial status. The Qur'an also provides the same guidance. At one place, it mentions:

فَانْكِحُوْهُنَّ بِاِذْنِ اَهْلِهِنَّ وَ اٰتُوْهُنَّ اُجُوْرَهُنَّ بِالْمَعْرُوْفِ (النساء:۲۵)

"Wed them with the leave of their guardians, and give them their dowers, according to what is customery."
- Al Qur'an IV: 25

Here in this verse the word '*ujoor*' in the original Arabic text refers to *mahr* and it has the associated condition of *'ma'roof'* or common usage (but of the reasonable type). Certainly, *mahr* that has come for mention here is that of the slave girls and not that of free noble women. Moreover, according to our *'ulama*, they, poor girls are not deemed to be the owners of their dowers. It is their masters whose property it becomes. However, this clarifies the point that the *Shari'ah* aims at assigning the matters relating to *mahr* according to usage, which are the customs of any period that are likable and not conflicting with the general temperament of the Islamic *Shari'ah*. This means the quantum of *mahr*, which one may consider suitable and reasonable is the proper *mahr*. One must keep in view the status of man and woman and the trend of times, if one does not desire it considered disfavour.

Another point of the interesting discussion relating to *mahr* has been what is property and to what commodities or substances is it applicable? The Hanafite School has taken to mean cash or

1. Several reports in this connection are to be found in Dar-Qutni, Kitabun-Nikah, Bab-ul-mahr, pp.391, 392, but none of them is free from weakness.

things that have some value. It does not mean profit. Abu Bakr Jassas says that the Qur'anic verse, 'seek them with your properties' clearly points to two things: Firstly *mahr* can only be that commodity which can be called property and which the woman can take possession of. Secondly, the man *mahr* should hand it over to woman so that she can make use of it. In 'profit', both these things are not possible. Neither does one entrusts it to her nor does she possess it. There is another Qur'anic verse relating to *mahr*:

وَاٰتُوا النِّسَآءَ صَدُقٰتِهِنَّ نِحْلَةً ؕ فَاِنْ طِبْنَ لَكُمْ عَنْ شَیْءٍ مِنْهُ نَفْسًا
فَكُلُوْهُ هَنِیْٓـًٔا مَّرِیْٓـًٔا ○ (النساء:۴)

"And give the women (on marriage) their dower as an obligation: but if they, of their own good pleasure, remit any part of it to you, take it and enjoy it with right good cheer. - *Al Qur'an IV: 4*

The words "Give the women their dower" indicate that it does not mean benefiting the woman in some way. Rather, it means giving her some material object. Benefiting is not the same as giving anything. Again, the words "you can enjoy it," clearly indicate that *mahr* should be something that one can enjoy or in return for which one can obtain some enjoyable thing. For example, if somebody fixes his wife's *mahr* teaching the Qur'an, this *mahr* shall not be proper.(Jassas: Ahkam-ul-Qur'an: 2/173) Therefore, for that matter 'ulama of the Hanafite School of the early days regarded any material return for the teaching of the Qur'an improper. (For detailed arguments see Tahhawi: Sharah Ma'ani-A'asar)

Imam Shafi'i r.a.a. says that accepting anything as wages for the teaching of the Qur'an is permissible and it can become *mahr*.(Navawi: Sharah-e-Muslim: 1/456) His argument is that the tradition mentioned earlier in which the Prophet s.a.w. is reported to have said:

اذهب فقد انكحتها بما معك من القرآن

(بخاری، کتاب النکاح، باب التزویج علی القرآن وبغیر صداق)

Rest assured. I have given her in marriage to you for (teaching her) the Qur'an that you have/know.
(Bukhari: Kitab-un-Nikah, Bab-ut-tazweeje 'alal Qur'ane wa beghair-e-Sadaq)

There is another report that supports it:

فقد زوجتكها فعلمها من القرآن

(مسلم، کتاب النکاح، باب الصداق وجواز کونہ تعلیم القرآن الخ)

I have given her in marriage to you. Teach her some portion of the Qur'an. (Muslim, Kitabun-Nikah, Babus-Sadaqe wa Jawaze-Kaunehi Ta'leem-al-Qur'an)

In some other reports, one finds some detail of this affair that he should teach her so many verses. The latter day 'ulama of the Hanafite school adopted the stand taken by Imam Shafi'i. They regard wages for teaching the Qur'an in order and its fixation as *mahr* too as proper. (Raddul-Muhtar 'alad-Duurril-Mukhtar: 2/459) Thus, the issue is one of unanimity among the 'ulama. It means that *Mahr* can be in the form of cash, land, garden, a house or any other thing having value. In addition, if the woman so desires she may opt for being educated or taught some professional skill in lieu of things material.

Mahr of the Divorced Woman

Some issues of mahr relate to divorce also. Divorce is possible after proper conjugal privacy or before that. In both these situations, there is either fixation or deferral of mahr. Thus, divorce becomes possible in four different situations, (Ibid., 2/463. See also Sharah-e-Waqayah: 2/38, 39)and separate ordainments govern them.

1. In case of divorce after proper conjugal privacy and fixation of mahr, full amount of mahr will have to be paid. The Qur'an says:

وَاٰتُوا النِّسَآءَ صَدُقٰتِهِنَّ نِحْلَةً ؕ (النساء:۴)

Give the women (on marriage) their dower as an obligation. *- Al Qur'an IV : 4*

At another place, it mentions:

وَلَا يَحِلُّ لَكُمْ اَنْ تَاْخُذُوْا مِمَّا اٰتَيْتُمُوْهُنَّ شَيْئًا (البقرہ:۲۲۹)

It is not lawful for you (men) that you should take back any of your gifts (from your wives). -Al Qur'an II : 229

2. Divorce after proper conjugal privacy but without previous fixation of *mahr* also entails payment of *mahr*, since its payment becomes compulsory after enjoyment of the woman:

فَمَا اسْتَمْتَعْتُمْ بِهٖ مِنْهُنَّ فَاٰتُوْهُنَّ اُجُوْرَهُنَّ فَرِيْضَةً ط (نساء:۲۴)

Give them their dowers for the enjoyment you have of them as a duty. - Al Qur'an IV: 24

If there is no fixation of *mahr* prior to conjugal privacy, man and woman can do so by mutual consent. If they are in conflict about its quantum, it will be "*mahr-e-mithl*" or the quantum in vogue in case of other women of the family.

(Radd al-Muhtar ala-al Durral Mukhtar, 2/460)

Imam Razi r.a.a. says that the argument in support of it is that in case of cohabitation with any woman erroneously (mistaking her for his wife), the erring man becomes liable to '*mahr-e-mithl*' (like that of the women of the victim's family). On this basis, the woman regular entry in wedlock is more entitled to '*mahr-e-mithl*'. (Tafseer-e-Kabeer: 2/282)

3. Divorce before actual cohabitation, but after fixation of *mahr*, entitles the woman to half of the fixed amount of *mahr*.

The Qur'an has explicitly pointed it out in these words:

وَاِنْ طَلَّقْتُمُوْهُنَّ مِنْ قَبْلِ اَنْ تَمَسُّوْهُنَّ وَ قَدْ فَرَضْتُمْ لَهُنَّ فَرِيْضَةً فَنِصْفُ مَا فَرَضْتُمْ اِلَّا اَنْ يَّعْفُوْنَ اَوْ يَعْفُوَ الَّذِىْ بِيَدِهٖ عُقْدَةُ النِّكَاحِ ط وَ اَنْ تَعْفُوْٓا اَقْرَبُ لِلتَّقْوٰى ط وَلَا تَنْسَوُا الْفَضْلَ بَيْنَكُمْ ط اِنَّ اللّٰهَ بِمَا تَعْمَلُوْنَ بَصِيْرٌ ○ (البقرہ:۲۳۷)

"If you divorce them before consummation, but after the fixation of a dower for them, then half of the dower (is due to them), unless they remit it, or (the man's half is

remitted by him in whose hands is the marriage tie; and the remission (of man's half) is the nearest to righteousness. And do not forget liberality between yourselves, for Allah sees well all ye do."

- Al Qur'an II: 237

4. Divorce before consummation, but before fixation of mahr entitles the divorce to *mata'* (a suitable gift). The Qur'an says nothing about the *mahr*:

لَا جُنَاحَ عَلَيْكُمْ إِنْ طَلَّقْتُمُ النِّسَآءَ مَا لَمْ تَمَسُّوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً ۖ وَمَتِّعُوهُنَّ ۚ عَلَى الْمُوسِعِ قَدَرُهُ وَعَلَى الْمُقْتِرِ قَدَرُهُ ۚ مَتَاعًا بِالْمَعْرُوفِ ۖ حَقًّا عَلَى الْمُحْسِنِينَ ○ (البقرہ:۲۳۶)

There is no blame on you if ye divorce women before consummation or the fixation of dower, but bestow on them (a suitable gift), the wealthy according to his means and the poor according to his means, - A gift of reasonable amount is due from those who wish to do the right thing.

- Al Qur'an II: 236

Besides these four situations, there is the fifth one also, that in case of man's death before consummation, and mahr also not being fixed, Imam Malik and Imam *Auza'i* are of the opinion that the woman shall not get her mahr, and only mata'a will accrue to her. The underlying reason being that mahr is the return of the enjoyment of man from her. Since no such relationship comes into existence, the question of *mahr* does not arise. However, she will get her share from the inheritance of the husband. Imam *Shafi'i's* well known opinion is also the same.

However, Imam Abu Haneefah and Imam Ahmad and some others are of the opinion that the woman shall get *mahr-e-mithl* as well as inheritance. The following Hadith supports it. Abdullah Ibn Mas'ood was questioned about this very issue - man dying before consummation and fixation of *mahr* - to which he replied that she will get her dower like that of the other women of her family, neither more nor less than that. She will have to observe iddat and she will also be entitled to her share in the husband's

inheritance. Ma'qal bin Sinan Ashja'i said in support of the verdict of Abdullah Ibn-e-Mas'ood, that a woman of his own tribe, Baru' binte-Warshiq had an identical case and the Prophet s.a.w. had pronounced exactly the same decision upon it. This information gladdened Abdullah Ibn Mas'ood very much.(Tirmizi Abwabun-Nikah, Babo Ma Jaa'fir Rajule Yatazawwajul-mar'ata. Abu Da'ood Kitabun-nikah, babo man Tazawwaja wa lam yasma sadaqan hatta mata)

This hadith has come in for critical examination also. However, it is in order. Imam Shafi'i's disciple Imam Mazani says that if this hadith gets proof of authenticity, nothing else shall be accepted but this.(Bidayatul-Mujtahid: 2/29) Since the Hadith is in order, Imam Abu Haneefah's stand appears to be stronger and preferable. (Raddul-Muhtar 'Alad-Durril-Mukhtar: 2/460)

Hanafite jurisprudence has the same verdict for a woman dying before consummation with mahr unfixed.

Woman has the Right to Utilise her Mahr

The Qur'an on one side declares that mahr is her right and she has the right to make use of it as she pleases. In the first place, this right of hers is to be recognized. Then she can have it in full if she likes, can make some concession in it or remit it altogether. On the other side, man has been told that if she gifts a part of it to him of her own free will, he is permitted to enjoy it:

فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا مَرِيئًا ○ (النساء:۴)

"But if they of their own good pleasure remit any part of it to you, take it and enjoy it with right good cheer."
- Al Qur'an IV: 4

This Qur'anic verse clearly indicates that mahr is the woman's property. She cannot be compelled to forgo her claim to it. She can also utilize it freely. If she remits any portion of it, the husband can enjoy it cheerfully. However, if she remits it in full or a portion of it under coercion or fear of his oppression or tyranny, it would not be lawful for him to benefit from it. Some 'ulama are of the

opinion that if after remission of *mahr* the woman later changes her mind and demands it she can do so, since it is a pointer to the fact that she had not cheerfully remitted it. (Tafseer-e-Kabeer: 3/146)

Sha'bi says that a woman came to Qazi Shuraih with her husband. She had given him (husband) some gift which she now wanted back. Qazi Shuraih directed the husband to give it back to her. The husband with reference to the verse (quoted above) said that after giving it away she had no right to demand its return. Qazi Shuraih told him that the Qur'an had laid down the condition of her cheerfully gifting it and only then, one could enjoy. Now in his case, if she had cheerfully done so, she would not have demanded its return.

It is reported about 'Umar r.a.a. that he wrote to the Qazis that women remit *mahr* cheerfully as also under coercion. Therefore, if the woman wants to go back upon her earlier plighted word, they should allow her that freedom. (Ibid)

For that matter none of the jurists of the well-known schools of jurisprudence approve of either party, husband or wife, taking back the gift once given.(Ibn-e-Hubaira. Al-Afsah: 2/59) However, this is a legal issue. What everyone accepts is that whatever a woman gifts should be of her own free will having no element of compulsion in it.

One finds further corroboration to the above view in the following verse:

وَلَا جُنَاحَ عَلَيْكُمْ فِيمَا تَرَاضَيْتُمْ بِهِ مِنْ بَعْدِ الْفَرِيضَةِ ط (النساء:۴)

But if after a dower is prescribed, ye agree mutually (to vary it) there is no blame on you. -Al Qur'an IV: 24

Man and woman by the mutual consent can reduce as well as increase mahr. Payment can be immediate or deferred at will by mutual agreement. Total remission allowed just as a change after fixation by mutual negotiation is also possible. For example, the initial offer was a grove and it later changed to a house.

(Imam Shaf'ai' differs in the matter of making any increment in mahr. For details see Jassas. Ahkamul Qur'an : 2/169-189)

All these issues depend upon the relations of the husband and the wife, their mutual trust and their circumstances. It is for this reason that the Qur'an has left it to their mutual accord. In meeting this obligation the pleasant atmosphere created by the facility and freedom in the social life can be easily appreciated.

Chapter 8

Polygamy and Polyandry

In the sight of Islam, polygamy is not an improper practice. Under certain restrictions, it regards polygamy lawful and harmless. The objection raised against it is that human nature abhors it and demands a monogamous society. It is a great injustice to woman also that in the presence of one wife another may be brought as a rival to her - the co-wife as a life-long source of jealousy and heartburn. Therefore, to put an end to this iniquity many countries have put a legal ban on polygamy. In some other countries there is no such legal restriction on it but it is not looked upon approvingly either. Probably, very few countries of the world do not stand in disfavour morally and legally though they do not actually frown upon it.

To begin with, it would be in the fitness of things to point out that it is not proper to make only Islam the target of criticism with reference to polygamy. For, if it is a crime Islam is not alone in committing it. Most of the nations of the world practised it. It had the legal authority and moral sanctions of different religions and it was not regarded a crime or a sin. The ascetic religions, however, despised not only polygamy but also conjugal relations. Christianity coming into its own had taken to asceticism. In their misplaced enthusiasm, they permitted a religious minded man to have even one wife with disapproval. The Western society could not detach itself completely from the deep-set influence of Christianity even during the period of its high-sounding claims of discarding religion and taking to agnosticism. It came to accept the concept of monogamy but found it hard to swallow the concept of polygamy (in spite of their claims of freethinking and secularism). The nations in bondage of the Western colonizers

started supporting the issue as if it was a revelation for them and they became conscious of woman's greatness.

Man's Inclination to Polygamy

Let us first look at it from man's point of view. Undoubtedly, most men are content with one wife only. Still they alone can allege polygamy to be alien to the nature of man who have observed and studied that nature through the coloured glasses supplied by the West. It is an undeniable fact that man is naturally inclined to polygamy. Even if he remains contented with one wife, if the society closes the doors of polygamy for him, one cannot rule out that he is free from any such tendency. If we close the doors of polygamy for those with a strong sexual urge, there is a great danger of their seeking gratification of that unusual urge by illicit means (out of wedlock). We have before us the experiment of the West with strict legally binding monogamy and its disastrous results. Rejecting polygamy, it had to put up with fornication and illicit sex in all its other heinous forms. There in the West "one man, one wife" may be the legal order in their society, but how many mistresses, stenos and secretaries and the so-called girl friends are associated with one man, he only knows! In addition, these women remain deprived of all those rights enjoyed by the legally wedded wife (even a co-wife).

Polygamy Is Man's Need

Polygamy is not only a tendency of man but also his need. Desire for sex is a natural urge. One woman cannot meet the abnormally frequent demands of sexual gratification by the highly sexed individuals and those whose passion is uncontrollable. For she is prone to her period with its disability for several days every month, post-parturient bleeding disables and enfeebles her, when she is psychologically unfit for sexual union, advanced pregnancy and delivery being her other periods of disability. She regularly passes through these phases when her passions are at the lowest

ebb. During these phases, she is not her normal self and unable to respond positively to her husband's advances. The other aspect of it is that cohabitation during these periods is detrimental to the health of both of them, besides being abhorrent to human nature. Sex during pregnancy is deleterious for the child's health also. Experience has shown that sentimentality in this matter on the part of the married couple adversely influences the moral build-up of the child born to them. Pregnancies, childbirths, and breast-feeding thoroughly shake her physical health, her body reserves deplete and early signs of senility overtake her much earlier than the husband who is not prone to any of a woman's debilitating phenomena. He finds himself much younger in both physique and spirits. For these reasons if a person is not contented with one wife and wishes to have another, he is in no way blameworthy. It would be unjust even cruel to condemn and oppose him. He should, however, be compelled (through social pressure) to meet his obligations to both of them justly and neither should be neglected with impunity.

The Benefits of Polygamy to the Woman

Now looking at the problem from the woman's point of view, we discover that in some situations polygamy becomes beneficial to her, a blessing in disguise.

1. The desire for progeny in man is natural (said to be the manifestation of the suppressed desire for survival or immortality, which somehow appears partially fulfilled through continuity of the family as well as partial projection of himself through progeny - his carbon copy). If somebody discovers that his wife is physically or psychologically barren and completely incapable of bearing children, he has two options open to him: he may retain the barren one and wed another, and the other course lies in divorcing the first and then taking another partner. Apparently, in rare cases only the second alternative would be acceptable to any woman.

2. The wife may be a chronic patient of some incurable malady or be disabled due to some serious disorder peculiar to her sex; would it not then be beneficial to the disabled partner that the husband takes another while retaining his ailing life-partner?

In all such situations it would be a grave injustice, rather, height of cruelty to the first wife if the husband is compelled by the law of the land to divorce her before opting for another match. This compulsion becomes all the more abominable when she shows her willingness to go on living under the husband's protection and he too is reluctant to throw her out to fend for herself.

Polygamy as a Social Need

Under certain circumstances, polygamy becomes a necessity for the society itself - a dire need for that matter.

1. Under normal conditions nature maintains the balance in the number of males and females born anywhere on earth. However, in the event of a country suffering tremendous loss of life on the battlefronts, the male population greatly reduces, particularly the younger men of marriageable age since it is they who largely become the gun-fodder, thus greatly distorting the balance and leaving the female population far in excess of the males. One solution of the catastrophic problem lies in leaving the young widows and unmarried women to rot and go on suffering in silence, or to take to the path of sin and create sexual anarchy and moral turpitude, their smouldering passions making them an easy prey to the lascivious and the dissolute. No healthy society worth the name can put up with this abominable state of affairs.

2. Manpower plays an important role in the life of nations. It has a basic importance in the country's defence, industries, agriculture and other multifarious social services to promote the country's interests. Under certain peculiar conditions and in delicate situations their importance becomes manifold. Polygamy

is also one of the ways of adding to the numerical strength. Women are overtaken by menopause at forty or thereabout, whereas men are fit at seventy or even later in exceptional cases. That means man's second marriage, once his partner has become defunct, may start a fresh chain of births, thus adding to the manpower of the nation. That is why the nations standing in sore need of greater manpower have to compromise or even encourage polygamy in the national interest.

Woman Cannot Put Up with Polyandry

Some people may assert that if the male of the human species enjoys the privilege of polygamy, it would only be in the fitness of things that people also recognize the right of the females to polyandry - having more than one husband at a time.

However, even if she were thus "privileged" she would never have the temerity to benefit from it. The custom of polyandry does exist in some uncivilized or semi-civilized tribes in India and elsewhere too, but the cultured and civilized world has never accepted it. The civilized human society has rejected it once for all.

Woman's nature points to the fact that she can become the wife of only one husband at a time. Polyandry or multiplicity of partners in bed is abhorrent to her nature.

Woman bears the burden of familial responsibilities. She has taken upon herself the most onerous ones. She undergoes the pangs of pregnancy, delivery and suckling the babe. She is so often obliged to discharge duties in the world outside. How can it be possible for her to submit herself to the sexual demands of several males? It would simply mean ruination of her health. The practice can also give rise to sexual and mental disorders. Experience has shown that women having extramarital relations (many at a time) are often victims of maladies pertaining to sex, and no more fit for life as respectable homemakers.

Polyandry may also create a certain social problem. A

healthy male given to polygamy may impregnate all his wives. The all the children shall be his. However, a polyandrous woman having sex with all her husbands can conceive only through one of them at a given time. Once she has conceived, intercourse with others is not going to contribute in this behalf at all. However, a very delicate problem arises when it comes to decide the paternity of the child. Who is going to determine it and how? Maternity is a matter of certainty but not so the paternity - it is a matter of doubt (unless all avenues are closed on suspicions and uncertainties)! All that can be said is that the child is (his or hers) mother's son or daughter a real stigma in respectable society, and a most disturbing and embarrassing situation for such indeterminate and unidentified progeny. Who is going to support, educate, and make him or her heir or be his / her legatee? There are many other knotty questions, which are difficult to answer in the existing familial system, headed by a male, recognized and accepted by the civilized world then as now.

The system of polyandry can deleteriously affect the society also as we know it.

1. It is inherent in the nature of human male, however, immoral and corrupt, that he cannot for a moment put up with another male having anything to do with his wife. Several males having a common female as their partner in bed, must be deadly jealous, each one of all the rest. They become bloodthirsty in establishing exclusive claim over her and the results of any conflict in getting sole possession of her may be very tragic indeed. Their tussle and constant fighting for her become unbearable for the woman herself and her peace of mind departs. It may be asserted that the same can be said of polygamy since each one of the co-wives is hell-bent on damaging the cause of all the rivals in her striving for the sole possession of the common husband and his exclusive love for and all the attention to her.

This is undoubtedly true enough. Despite this, a woman's reactions to it, compared with those of man are not so strong and

the results too are not so serious and disturbing. May be one of the causes of this difference is that she consciously or unconsciously regards polygamy justified and pardonable.

2. A woman is inherently more modest. This feeling is natural to her and emerging automatically from her. For all the sustained and laborious efforts of the immodest West, this strong sense in her has so far kept at bay the agents of evil. They could not wipe it out completely even in the West. It is due to this deterrent that she does not give loud expression to her passion for sexual gratification and openly invite the opposite sex for the satiation of her smouldering passions. This sense of concealment of her feelings has benefited human society in a big way. She cannot go headlong with temerity to create anarchy in sex, very oblivious of the consequences. Sex relations with more than one man badly injure or destroy this restraining factor of her character, and gradually she becomes totally devoid of any sense of modesty and chastity.

The female of the human species, once denuded of her sense of modesty and self-prestige based on chastity, the society rushes headlong towards the abysmal depths of degradation because of sexual anarchy.

Polygamy not meant for Debauchery

Let us now consider the objection that polygamy is also a clever contrivance for debauchery. It provides man with total freedom to sexual gratification at will. That is why capitalists and feudal lords gathered around them hordes of women of their choice and spent their lives in the pleasant company of and fairies (in their self-made paradise). Islam in recognition of polygamy has supported and authenticated this very corrupt order (feudalism) and opened avenues for lasciviousness and debauchery, that a person may wed any woman whenever he likes and when he has reached the permitted number, four, he may divorce one of them

and replace her by another beauty. He may even divorce all the four at once and bring in another fresh more elegant lot for his fairyland.

This objection holds well in the case of monogamy as well. Whoever desires can take leave of the old used one whenever another fresh and more charming damsel catches his eye and he takes a fancy to her, he can adorn his luxury chamber repeatedly. However, only one who closes his eyes to the very patent fact that a dissolute person is invariably the most irresponsible person can raise such an objection. All that he cares for is his own pursuit of "good times." He does not like to burden himself with any responsibility. All those who opted for a life of dissoluteness took to unbridled sex. Not to say polygamy, they disapproved of the restrictions of married life. If at all they adopted it under social pressure, they never met their obligations in this behalf. The Islamic way of life overburdens one with responsibilities. Polygamy increases this burden many times over. Islam imposes so many responsibilities and restrictions on him that without a dire need he cannot think of more than one wife at a time.

Justification of Polygamy

The glorious Qur'an mentions polygamy in the context of the upbringing of the orphans and of the protection of their rights.

وَاِنْ خِفْتُمْ اَلَّا تُقْسِطُوْا فِى الْيَتٰمٰى فَانْكِحُوْا مَا طَابَ لَكُمْ مِّنَ النِّسَآءِ مَثْنٰى وَ ثُلٰثَ وَ رُبٰعَ ۚ فَاِنْ خِفْتُمْ اَلَّا تَعْدِلُوْا فَوَاحِدَةً اَوْ مَا مَلَكَتْ اَيْمَانُكُمْ ؕ ذٰلِكَ اَدْنٰى اَلَّا تَعُوْلُوْا ○ (النساء:٣)

"If ye fear that ye shall not be able to deal justly with the orphans, marry woman of your choice, two or three, or four; but if ye fear that ye shall not be able to deal justly (with them), then only one, or (a captive) that your right hands possess. That will be more suitable to prevent you from doing injustice." - *Al-Qur'an IV:3*

Commenting on this verse, the exegetes maintain what the

Traditions also corroborate that on occasions the guardians of the orphan girls used to marry them lured by their assets or swayed by their beauty but were guilty of default in the payment of mahar. This was gross injustice and Islam asked them to desist from it. It allowed marrying them only on full payment of mahar. It also conceded to them the right to marry other women, besides the orphaned girls under their control.

(Bukhari, Kitab al Nikah Bab al Targheeb fill Nikah, This matter has been explained under the heading of Right of Dower, See also Right of Women)

The fact of the matter is that the heart of a believer is essentially sensitive to the feelings of injustice. That is why it is stated: if you are mortally afraid of being inadvertently unjust to the orphaned girls, then spare them and marry other eligible women who impress you.

Another interpretation is if you fear that you may not render justice to the orphaned girls then marry those of their widowed mothers with whom marriage is legally permissible. This permission may facilitate the rendering of justice easy.

This verse highlights the background in which permission for polygamy is given and which contains the refutation of the objections pertaining to the theme of polygamy too.

Legal Restrictions

The mode of thinking and temperament that Islam wants to create, if inculcated in the right spirit, cannot allow a man to tolerate for a moment a life of dissoluteness and debauchery. This is, however, irrelevant to our discussion here, and we are mentioning here some of the legal restrictions that Islam imposes in connection with polygamy. They will give an idea that Islam far from opening avenues on polygamy has actually created great barriers in its way.

Limitation of Four

Before the advent of Islam, polygamy was the common

practice and Arabia in this regard was no exception. Some people wedded as many women as they pleased, maintaining an entire harem at times and tyrannised them. Islam put a ban on more than four at a time. It recognizes and assents to polygamy as a personal and social need but is not prepared to accept a situation where man needs more than four wives. It declares it improper and prohibited. Whoever exceeds the prescribed limits of four, Islam shall proceed legally against him. In this way, it has put a ban on unlimited number of wives, more than four, then in vogue and prevented the practice for future.

Only Permission, not an Injunction

Some people present polygamy as if Islam had ordained it and as if the Muslim, who may or may not be observing its other injunctions, is compulsorily following this particular ordainment. One wife cannot meet his needs. He must always have four of them to embellish his bedchambers.

In this connection, we would like to inform such misinformed people that the idea that all Muslims or at least a great majority of them practise polygamy is erroneous and baseless. Among millions of Muslims, there may be only a few having more than one wife. It is not just our guesswork. Data collected through authentic surveys contradict the opinion that all Muslims practise polygamy. They only prove that in this context, compared with Muslims, the proportion of people from other communities is much more.

Secondly, this verse (4:3) makes the other impression that Islam has ordained it equally baseless. That is a matter of leave in case of dire need and not an injunction of the Islamic Shari'ah. By abstaining from it all his life a Muslim shall not be guilty of any sin of omission and lacking in piety or religiosity by any standard of judgement.

Thirdly, this verse (4:3) and other teachings of Islam have not

encouraged polygamy. It did not persuade and urge its followers in this behalf. Rather, it pointed out its complex responsibilities so that they may give it serious thought before plunging into it. He should never adopt it as a means of satisfying his lust.

Fourthly, this verse (4:3) refutes the idea that polygamy is a means of luxury and enjoyment alone. It can also be a means of sympathy and helpful attitude. Suppose there is a young girl remaining unmarried (not finding a suitor), or one being widowed in the prime of life and with no one to support her. If a person marries her as his second wife out of sheer sympathy and compassion, can one term this act of his condemnable or he be regarded guilty of lustfulness?

Some Conditions and Safeguards

The person, taking advantage of the leave granted to him by Islam and intending to wed another wife in the presence of the first, finds himself confronted by the following restrictions before acting on it.

1. Maintenance and residence of the second wife along with that of the first wife must be easily within his means. Some jurists are of the opinion that if she is not prepared to live with his first wife, he will have to provide a separate living space for her.

(Raddul-Muhtar Alad-Durril-Mukhtar: 2/212-213)

2. Physically, he must be capable of properly maintaining conjugal relationship with both. The jurists have discussed in detail its legal aspect and the interval between two performances of intercourse. Apart from this, one of the objectives of nikah is the protection of modesty and chastity. That is why many jurists have written that the interval between one sexual act and another should not exceed four months. This is supported by a decision of the period of 'Umar r.a.a., the second rightly guided Caliph.

(Al Mughni Le-Ibne Qudamah: 7/30, 31. Raddul-Muhtar Alad-Durril-Mukhtar: 2/546-547)

Imam Ibn Taimiyah says that a person should cohabit with his

wife according to the common usage among nice well-behaved people. This is more important than her feeding arrangement. He goes on to add, "according to some, copulation once in four months is binding on the husband. Some others have said that it depends on the desire of the woman and the sexual powers of man. And this appears to be reasonable.

(Fatawa Ibn-e-Taimiyah: 32/271. Print 1398 A.H)

Allamah Ibn-e-Arabi Maliki says:

اذا قدر الرجل من ماله و من بنيته على نكاح اربع فليفعل و اذا لم يحتمل ماله ولا بنيته فى البـاء ة فليقتصر على ما يقدر عليه (ابن عربی، احکام القرآن: ۱/۱۳۰)

If a person financially and physically is capable of meeting his obligations, he may wed four women. In case of incapability he must rest contented with just as many as he can easily support and satisfy sexually. (Ahkamul-Qur'an, Ibn-e-Arabi: 1/130)

That means a person incapable of meeting the challenges of polygamy must content himself with just one wife.

3. Even if a person is financially and physically capable of a second marriage, he is bound to maintain the just balance between them in all matters where equality is possible in practical life, namely, the matter of maintenance, dress, residence and spending the night with them. Equity and justice are the real spirit in the Islamic order of mutual dealings. It has attached so much importance to justice in the matter that even if there is a lurking doubt about his maintaining the correct balance in his dealings with them, he has been directed to remain contented with only one wife.

The Qur'an says:

فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً (النساء:۳)

"But if ye fear that you shall not be able to deal justly (with them) then only one." - *Al Qur'an IV: 3*

Allamah Abu Bakr Jassas Hanafi says that if a person fears

that he cannot deal justly with all the four wives he should come down to two, and if that too is not possible, he should keep only one. (Ahkamul-Qur'an, jassas : 2/64)

In traditions of the Prophet s.a.s. there is serious denunciation of husbands for failure in the matter of just dealings between the wives. Abu Hurairah r.a.a. reports the Prophet s.a.w. to have said:

اذا كانت عند الرجل امرأتان فلم يعدل بينهما جاء يوم القيامة و شقه ساقط (مشکوٰۃ المصابیح، کتاب النکاح، باب القسم بحوالہ ترمذی، ابوداؤد، نسائی، ابن ماجہ، دارمی)

A person having two wives, failing to maintain balance of justice between them (leaning towards any one of them) shall come on Doomsday with half of his body inclined (to one side) or paralysed.
(Mishkat-ul-Masabih, Kitab-un-Nikah, Babul Qasam, with reference to Tirmizi, Abu Da'ood, Nisai, Ibn Majah, Darimi)

To maintain equality and just treatment between the wives in all those matter, lying within his power is binding on him. It is not, however, possible for him to love all of them equally. His heart may be more inclined to one than to others. Similarly, equal sharing of bed and copulation with all of them is not practically possible. It depends so much on the desire (sex-urge) and preparedness (both mental and physical). It is among those things over which he has no control.

'Ayeshah r.a.a. reports:

ان النبی ﷺ كان يقسم بين نسائه فيعدل و يقول اللهم هذا قسمی فی ما املک فلا تلمنی فيما تملک ولا املک

(مشکوٰۃ المصابیح، کتاب النکاح، باب القسم بحوالہ ترمذی، ابوداؤد، نسائی، ابن ماجہ، دارمی)

"The Prophet used to distribute those things among his wives justly that could be divided easily. After that, he used to say, 'O Allah! I have divided those things over which I have control Those over which thou alone hast control and which do not lie in my

power (love and other sentiments), in case of any discrepancy in these matters, do not hold me answerable.'

(Mishkat-ul-Masabih, Kitab-un-Nikah, Babul Qasam, with reference to Tirmizi, Abu Da'ood, Nisai, Ibn Majah, Darimi)

However, it does not mean either that in the name of love or cordiality one should incline so much towards any one spouse that it may result in oppression and excesses towards others, and they, having a husband may be pushed to live as though they were without one. The Qur'an explicitly interdicts it saying:

وَلَنْ تَسْتَطِيْعُوْا اَنْ تَعْدِلُوْا بَيْنَ النِّسَآءِ وَلَوْ حَرَصْتُمْ فَلَا تَمِيْلُوْ كُلَّ الْمَيْلِ فَتَذَرُوْهَا كَالْمُعَلَّقَةِ ط (النساء:۱۲۹)

"You are never able to do justice between wives even if it is your ardent desire: but turn not away (from a woman) altogether, so as to leave her (as it were) hanging (in the air)." - *Al Qur'an IV: 129*

4. Just as the second wife is entitled to all those rights and privileges enjoyed by the first wife, so shall the children of the latter have equal rights with those between the progeny of the two legally. The responsibility of all these restrictions and conditions comes to the shoulders of the person benefiting from the leave granted by Islam to take to polygamy.

The fact is that according to the teachings of Islam it is not easy to have more than one wife. However, under certain personal and social conditions granting the leave of polygamy is of greater utility than putting a complete ban on it. That is the reason why Islam permits it.

Chapter 9

The Issue of Divorce

One of the objections raised against the Islamic Law of divorce is that in empowering man to divorce, Islam has been harsh and unjust to the woman. It depends entirely on the will, even whims, of man to divorce her and whenever he likes he can cut her off from himself on any trivial issue. Thus, the future of a woman becomes dark and she finds herself compelled to spend her days without any support.

The Need for Divorce May Arise

Firstly, one does not find the horrible picture of divorce presented anywhere. Secondly, divorce is the only proper and reasonable solution to the many familial disputes and complications. It is an undesirable fact that at times, it becomes impossible for man and woman to live together under the marriage tie and they are dead set on getting rid of each other. There can be many reasons for it. At times, the temperaments are in total non-conformity and at heart and they are not ready to accept each other. At others, their intellectual and educational levels are not the same and in spite of closeness, a feeling of distance keeps them miles apart. In yet other situations, the social and economic differences between them are so wide that they cannot bridge them. They clearly appear even to the casual observer to be belonging to two different social strata - or two definite classes alien to each other. On some occasions such degrading moral weaknesses reveal themselves in either party that, there is neither hope of reform nor can one put up with them as a sore in the side. In all such situations, it is the demand of common sense that they should part quietly without much ado. If the society like that of

Christianity does not go on living under the same conditions, the purposes for which they had come together under marriage-tie shall never be served. There are certain detriments associated with this state of affairs:

Firstly, the woman shall become a burden to man and he is most likely to mete out the worst treatment to her.

Secondly, after divorce woman can get a match suiting her temperament and other conditions, thus entering a better phase of life. One eliminates this possibility by closing the door upon divorce.

Thirdly, the domestic life of a conflicting pair at loggerheads under the same roof becomes hell for them both and their peace of mind departs.

Fourthly, in a state of constant quarrel and tension the progeny cannot receive the attention it deserves. The children shall grow up without any social and moral training and become the quarrelsome children of quibbling, quarrelling, intolerant parents.

Who Should have the Right of Divorce?

Let us now take up the question who one should endow with the right of divorce. There are three alternative answers to this query. The first option is that both should enjoy it. The second is that the husband should be so empowered. While, the third option can be that the woman should have this right.

In the first instance, if both have the right of divorce, the plethora of divorces shall make family life uncertain and insecure. In the case of both exercising their right there will obviously be a much larger number of 'casualties' than with only one armed with this weapon to sever relations. It is an admitted fact that a society with lesser number of divorces has a better and much more secure familial order. Frequent and free use of this right will disrupt the organization. The West has vested it in both the parties with the result that the wedlock in the Western society has become a

practical joke. Whichever of the parties concerned, whenever it likes can exercise his or her right of severance of conjugal relations and part. The frequency and number of divorces has shaken the foundations of the family and the society as a whole.

The second option is the one adopted by Islam. It has vested this power in man for the reason that he enjoys a position greater responsibility and power in the family. He is the supervisor of the family, maintainer of the wife and with that bears the heavy burden of the children's upkeep, education and training. Therefore, it is he, who should decide whether it is possible to bear the burden of these responsibilities in collaboration with the wife or not. In the Qur'anic terminology, "*in his hands has been placed the marriage knot (to tie or untie the relation of nikah (marriage contract.*" (Al-Qur'an II: 227) It would be harsh and unjust to compel him to go on maintaining a woman as the queen of the mini-realm, home, whom he does not like, or who disregards cooperating with him. It is hard to assert with conviction that armed with this weapon, he will use it indiscreetly as it is he, who suffers more. He cannot demand return of the dower bestowed upon her. If not already paid, he will have to pay it now after separation. The ornaments and other gifts given to her are her property and she will take it with her. Besides, all his spend on marriage and on her while she was with him, he cannot claim. In the case of a second marriage, he will have to pay the would-be wife her dower, bear the expenses of marriage once again and undertake all the accompanying responsibilities. Moreover, he will own the burden of the upkeep of his children from his first wife (now divorced). Those objecting to man's right to divorce are living in an imaginary world, not one of facts. Perhaps they do not have time to give the issue a serious thought. However, a person, having all these problems before him, will have to think twice before divorcing one wife and bringing in another to embellish his house afresh. Rehabilitation after evacuation is not such an easy job!

Taking the third option in which woman will have the right to divorce, it is apparent that one cannot eliminate the abuse of the right. If a man by exercising this right can harass a woman, one cannot at all rule out the possibility of its improper use at her hands, putting the man in a serious trouble by creating critical situations and factual calamities.

In bestowing the right upon her, there are some evils associated with it too:

1. It would be a grave injustice to man to make him bear all the responsibilities of the woman (dower, gifts, maintenance, etc.) while granting woman the right to divorce.

2. Divorce is damaging to man entirely whereas the woman remains immune from any harm. If one grants her the right, a morally irresponsible woman, shall divorce her husband whenever she chooses. Handing over the children to him, she will take leave of him with the "booty" of her dower and jewellery and gifts in full triumph, and at the first chance coming her way, she will marry another man getting fresh dower and other paraphernalia.

3. It is an obvious fact that woman is much more sentimental than a man is and can any time under impulse of the moment sever relations with man. That will go a long way with the ratio of divorce mounting under normal conditions in confronting the society with a new crisis.

The Detriment of Divorce by a Court of Law

The way suggested to wriggle out of this difficulty is that whichever party, husband or wife, wishing to loosen the bond and get freedom, should approach the competent court requesting separation. If the reasons put forth satisfy the jury as sufficient for divorce, it may legally separate them, failing which, it will turn down their request.

The evil attendant upon it is that, whichever of the couple desires divorce, in order to satisfy the court and not content with

stating the factual shortcomings and excesses of the opposite party, will overstep to freely (with an easy conscience) charge him or her with false accusations. The rejoinder is sure to lead to retaliation in a 'bigger way', which will bring them morally to a very low level in the sight of the society from which degradation, they can hardly recover. They will drag the family honour and prestige into mire, leaving it as the laughing stock for the people.

Again, our courts in general are notorious for their lethargic pace in handling cases before them. They may take ages in administering justice to the couple that is "up in arms" and heaven only knows how they are going to put up with (suffer) each other under the same roof so long.

The other aspect of this issue is that if the court decides against them refusing separation, they must remain tied together under severe compulsion of circumstances, making life most miserable, almost insufferable, for them, without even a distant future promise of pleasant time.

Some Moral Instructions

The way Islam shapes the mind and temperament of man, educates, and trains him is such that divorce can hardly find room in his life and the lurking fear that merely for sexual enjoyment and gratification of abnormal lust he will go on divorcing women most carelessly is only a remote logical possibility. We present below a glimpse of the moral instruction of Islam in this context.

Nikah is a Serious Contract

According to Islam, man and woman through nikah do not come together for a brief span of "good times" but enter a life-long contract of the closest relationship and comradeship. This contract has been termed by the Qur'an a solemn covenant (Q. IV: 21). The person who seriously enters this trust does not easily commit breach of trust. Only one, who does not realize its importance and

makes such a serious agreement, can be guilty of playing this joke. The Prophet s.a.w. has declared joking (non-serious attitude) in the matter of nikah unwarranted (most improper), since it negates the seriousness which is the demand of this affair. Abu Hurairah r.a.a. reports the Prophet to have said:

ثلاث جدّهن جدّ و هزلُهُنَّ جد النكاحُ والطلاقُ والرجعةُ

(ابوداؤد، کتاب الطلاق، باب فی الطلاق علی الہزل۔ ترمذی، ابواب الطلاق واللعان، باب ماجاء فی الجد والہزل فی الطلاق)

"There are three things in which seriousness has its own reserved place, but even things said and done in joke shall be taken seriously (to be binding on him). And they are nikah, divorce and turning back upon it." (Abu Da'ood, Kitabut-Talaq, Bab fit-Talaqe, 'alal Hazal, Tirmizi, Abwab-u-Talaq wal-li'an, Babo Ma Ja'a fil jadd-e Wal Hazale Fit-Talaq)

Imam Khattabi records: The 'Ulama have consensus that a major sane person's divorcing his wife is effective legally as divorce. If he, calling it a joke, wants to nullify his earlier pronouncement, it is not acceptable. Some of the 'ulama are of the opinion that such a joke (in the serious matter of divorce) is just like playing and joking with the Qur'anic verse. Since, if condoned, it will mean that a person after divorcing his wife or emancipating a slave can take back his earlier declaration saying that he was joking (not divorcing his wife or freeing a slave in real earnest). In this way, there is all likelihood that one may not at all obey divine injunctions. Therefore, all that this tradition mentions, any statement made about them will be binding on him to act on, not willy-nilly but with determination. (Ma'allim-us-Sunan: 3/243)

Divorce is Extremely Undesirable

Islam certainly allows divorce in need, but also pointed out that it is not a desirable act, rather, one of the most underirable acts in the sight of Allah. Therefore, recourse to it should be had

only when compelled by circumstances beyond control. Abdullah Ibn-e-'Umar reports the Prophet s.a.w. said:

ابغض الحـلال الى الله عـز و جـل الطلاق

(ابوداؤد، کتاب الطلاق، باب فی کراہتہ الطلاق۔ابن ماجہ، ابواب لطلاق)

"In the sight of Allah, the Exalted, among the permitted things, the most undesirable is divorce."

(Abu Da'ood, Kitabut-Talaq, Bab fi karahatit-Talaq. Ibn-e-Majah, Abwab-ut-Talaq)

Maharib bin Wasar r.a.a. reports the prophet s.a.w. said:

ما احل الله شيئا ابغض اليه من الطلاق (ابوداؤد حوالہ سابق)

"Allah has not permitted any thing more unwholesome than divorce." (Abu Da'ood, Ibid)

Mu'az reports another tradition with a similar import. Although weak in authority, it corroborates the two foregoing reports. The Prophet s.a.w. said:

يا معـاذ ما خلق الله شيئا على وجـه الأرض احب اليـه من العتاق ولا خلق الله شيئا على وجـه الأرض ابغض اليه من الطلاق (دار قطنی مع التعلیق المغنی، کتاب الطلاق، ص ۴۳۹)

"O' Mu'az! Allah has not created anything more pleasing to Him than the emancipation of a slave. Similarly, he has not created anything more offensive than divorce."

(Dar Qutni Ma'at-Ta'leeq-il-Mughni' Kitabut-Talaq, Printed in Delhi, p. 439)

On the one hand, it impresses on men's mind that divorce is a disagreeable act, and on the other, instructs women to refrain from unnecessarily demanding divorce. Thauban r.a.a. reports the Prophet s.a.w. said:

ايما امرأة سالت زوجها طلاقا فی غير ما باس فحـرام عليها رائحة الجنة

(مشکوۃ، کتاب النکاح، باب الخلع والطلاق بحوالہ احمد، ترمذی، ابوداؤد، ابن ماجہ، دارمی)

"The woman who makes demands on man to divorce her without offering a compelling reason for it, even the fragrance emanating from heaven shall be denied to her (as unpermitted)."

(Mishkat al Masabih Kitab al Nikah Bab al Khula wa al talaq with reference to Ahmad, Tirmidhi, Abu Dawood, Ibn Majah, Darmi)

Woman's Infirmities should be Tolerated

Collective life is not subservient to any individual. One has to sacrifice his will and personal opinion on any issue in the collective interest. In conjugal life too, there are occasions when the opinions of the husband and wife conflict. However, one should not allow them to develop into an issue of an erroneous notion of prestige with either party that they may jump up to a serious decision like separation. There are moments when sentiments and impulses of the moment overwhelm him, he fails to have the least consideration for any opinion other than his own, and loses sight of much greater interests. Islam teaches us that in view of the much wider expediency and important interests relating to the familial life, we must magnanimously overlook trifling errors of thought and judgment and an attitude of love and benevolence should prevail. The Qur'an says:

وَ عَاشِرُوْهُنَّ بِالْمَعْرُوْفِ ۚ فَاِنْ كَرِهْتُمُوْهُنَّ فَعَسٰۤى اَنْ تَكْرَهُوْا شَيْـًٔا وَّ يَجْعَلَ اللّٰهُ فِيْهِ خَيْرًا كَثِيْرًا ○ (النساء:۱۹)

"Live with them on a footing of kindness and equity. If ye take a dislike to them, it may be that ye dislike a thing and Allah brings about through it a great deal of good." - *Al Qur'an IV: 19*

Attempt of Reform is Necessary

Even if the woman is lacking in obedience, is headstrong and not listening to reason, Islam does not allow a decision on divorce. Man has been vested with discretionary powers so that he may try his best to improve the worsening situation through an

agreeable blend of strictness and allowance (sufferance) so as to amicably settle the domestic affairs inside the sanctum (home) itself and not broadcast. Divorce should not come for consideration in these petty domestic quarrels. Allah, the Exalted, admonishes thus in the Qur'an:

وَالّٰتِیْ تَخَافُوْنَ نُشُوْزَهُنَّ فَعِظُوْهُنَّ وَاهْجُرُوْهُنَّ فِی
الْمَضَاجِعِ وَاضْرِبُوْهُنَّ ۚ فَاِنْ اَطَعْنَكُمْ فَلَا تَبْغُوْا عَلَيْهِنَّ
سَبِيْلًا ۗ اِنَّ اللّٰهَ كَانَ عَلِيًّا كَبِيْرًا ○ (النساء:۳۴)

"As to those women on whose part ye fear disloyalty and ill-treatment, admonish them (first), (next) refuse to share their beds, (and last) beat them (lightly): But if they return to obedience, seek not against them means (of annoyance): for Allah is Most High, Great (above you all)." *- Al Qur'an IV: 34*

To bring a disobedient and headstrong woman to terms and to reform her, the Qur'an prescribes instilling fear of Allah's displeasure and the retribution of the Hereafter in her, in the first stage, drawing her attention to the mutual obligations and rights of husband and wife as well as the expediencies of the situation in the family perspective. One can achieve all this with tenderness and polite manners. If the primary measure fails in bringing her round, the Qur'an goes a step further in stern handling and advises the husband to segregate her from the conjugal bed, meaning cessation of sex activities in various degrees. The companions of the Prophet and those following them or Tabi'een have given three different explanations of this stern admonitory step. Let them share your bed but abstain from copulation. Even while sharing your bed, turn your face away from them, keeping mum to demonstrate your displeasure. While, the third and final stage is that you do not allow them to share the bed with you but sleep in a separate bed. (Ibn-e-Jareer: Jami-'ul-Bayan fi-Tafseer-il-Qur'an 5/38-41)

This is a psychological measure and a person can adopt it only in case he has sufficient control over his passion. However, if

he is capable of that much self-control, it is mostly to bring the woman to see reason and behave properly. Sex is a very headstrong passion and if man has a strong will power of self-restraint, the woman cannot go far in keeping herself in check.

However, there may be some, whom this course of treatment may fail to cure. In such a situation, Islam allows man to resort to corporal punishment too. Now, this measure appears rather too harsh and uncivil to adopt in dealing with the fair sex. However, its permission is only after the first two have proved totally ineffective and the woman persists with her churlish behaviour and disobedience. This is the last resort when nothing appears to avail. Secondly, the Prophet s.a.w. has forbidden hitting hard, not to cause a wound or disfigurement in any way.(Muslim, Kitabul Hajj, Bab Hajjatun Nabi) Moreover, one must avoided hitting the face at all costs. Abdullah Ibn-e-Abbas r.a.a. has made it only symbolic, advising to strike with a miswak (tooth stick). Qatadah r.a. and Hasan Basri r.a. advise against causing disability and a strike leaving a scar. (Ibn-e-Jareer, jami-'ul Bayan fi-Tafseer-il-Quran)

As against this corrective measure, if somebody beats up a woman like a barbarian, the Islamic law shall come to her rescue and duly punish the tyrant. Imam Navavi says that even if a light corporal chastisement causes her death (it will be deemed murder by mistake) the husband (and his family) shall be liable to pay her blood money, and the atonement for murder by mistake shall become due from the husband alone. (Navavi: Sharah-e-Muslim: 1/397)

Woman may Forgo Some of her Rights to Refrain Husband from Divorce

On the one hand, Islam has repeatedly stresses on man to be generous to woman, recognizing her rights and overlooking her mistakes, look to her redeeming features and reform her in the matter of her infirmities and shortcomings. On the other, it advises woman not to make frequent demands for divorce. If she notices

carelessness and neglect on the part of the husband towards herself, she should not only give up demands and insistence on her rights but should be prepared to forgo some of them. Instead of confrontation with the husband, she should try to live in peace and amity with him as far as possible. In receiving some allowance from the wife, the husband's pride is likely to be hurt. So if the wife makes some allowance in her demands on him, he should not feel slighted or insulted. Help in some way from the wife and he benefiting from it will in no way degrade him. Allah says:

وَإِنِ امْرَأَةٌ خَافَتْ مِنْ بَعْلِهَا نُشُوزًا أَوْ إِعْرَاضًا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يُصْلِحَا بَيْنَهُمَا صُلْحًا ۚ وَالصُّلْحُ خَيْرٌ ۗ وَأُحْضِرَتِ الْأَنْفُسُ الشُّحَّ ۚ وَإِنْ تُحْسِنُوا وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا ○ (النساء:۱۲۸)

"If a wife fears cruelty on her husband's part there is no blame on them if they arrange an amicable settlement between themselves. And such settlement is best, even though men's souls are swayed by greed. But if ye do good and practice self-restraint, Allah is well acquainted with all that ye do." - *Al Qur'an IV: 128*

Hafiz Ibn Katheer says that if a woman fears that man is nursing hatred for her and showing signs of remoteness, she can forgo all the rights of her maintenance, his stay with her during the night, or reduce such days to a minimum. There is no harm in man's agreeing to such an offer and coming to be at peace with her. The wife can spend on her husband and he can accept her offer. The Qur'an says that their opting for peace and amity is better than separation. (Tafsser Ibn Kaseer: 1/561, 562)

Responsible Persons on Both Sides Should Try to Improve their Relations

At times differences and conflicts arise out of mere trifles, which develop gradually, becoming vehement, creating a sort of remoteness and segregation between them. At this stage, they are

no more in a position to forget their quarrels and quibbles and to come to reconciliation by themselves. The Qur'an directed that in a situation where the principal parties concerned cannot remove their differences, their trustworthy seconds as arbiters, one of either side, should put their heads together to sort them. If they undertake it with sincerity and goodwill, Allah will help in their efforts, and who knows the apparently irreconcilable affairs may somehow be resolved and peace may reign there once again:

وَ اِنۡ خِفۡتُمۡ شِقَاقَ بَيۡنِهِمَا فَابۡعَثُوۡا حَكَمًا مِّنۡ اَهۡلِهٖ وَ حَكَمًا مِّنۡ اَهۡلِهَا ۚ اِنۡ يُّرِيۡدَاۤ اِصۡلَاحًا يُّوَفِّقِ اللّٰهُ بَيۡنَهُمَا ؕ اِنَّ اللّٰهَ كَانَ عَلِيۡمًا خَبِيۡرًا ۝ (النساء:۳۵)

"If ye fear a breach between the twain, appoint two arbiters one from his family, and the other from hers, if they seek to set things right, Allah will cause their reconciliation. For Allah hath full knowledge, and is acquainted with all things." - *Al Qur'an IV: 35*

Two Reformative Initiatives in Connection with Divorce

Having failed in all attempts to join and keep joined, divorce presents itself as the only solution to the tangle. Islam took two initiatives by way of reform:

1. In Arabia of the days of Jahiliyah, or pre-Islamic period, there was no such check on divorce and revocation. The person intending to harass his wife, divorced her, revoked before the expiry of the term, again divorced and revoked and continued with this nasty joke with her as long as he liked. (For details see Tafseer Ibn Kaseer: 1/271, 272) In this way, a woman with a husband and all was compelled to live as a divorcee. The Qur'an put a ban on indefinite number of divorces and revocations declaring that one can divorce only twice and there is permission to revoke only these two.

اَلطَّلَاقُ مَرَّتٰنِ ۪ فَاِمۡسَاكٌۢ بِمَعۡرُوۡفٍ اَوۡ تَسۡرِيۡحٌۢ بِاِحۡسَانٍ (البقرۃ:۲۲۹)

"A divorce is only permissible twice; after that, the parties should either hold together on equitable terms, or separate with kindness." - *Al Qur'an II: 229*

Repeating it a third time, shall deprive man of revocation and shall automatically separate his wife from him.

2. A person could harass his wife benefiting by the right of even these three divorces, divorcing her for long terms. For example, divorcing and not revoking for a year or two and revoking later if he was so pleased. Similarly after divorcing a second time he used to keep her in suspense for a long time neither meeting his obligations to her, nor separating from her, and finally when fed up with her, he did divorce her a third time to throw her out at last on the dung hill.

To render this mischief ineffective Islam fixed a short term within which man will have to decide about revocation or abstaining from it. This is '*iddat*' in Islamic terminology. Once it is over, she is free from the bondage to marry again wherever she is pleased. (In case of three divorces at a time men will be deprived of the right to revocation. After 'iddat' is over she can marry another man)

The Qur'an directs maintenance of a proper account of the dates of divorce and the expiry of iddah. One cannot divorce and ignore its details. Divorce is not a joke.

يٰٓاَيُّهَا النَّبِيُّ اِذَا طَلَّقْتُمُ النِّسَآءَ فَطَلِّقُوْهُنَّ لِعِدَّتِهِنَّ وَ
اَحْصُوا الْعِدَّةَ ○ (الطلاق:۱)

"O Prophet! When ye do divorce women, divorce them at their prescribed periods." - *Al Qur'an LXV: 1*

Divorce is possible after one has gone into the wife and before that stage also. In case of divorce after consummation, her term of waiting shall be the period taken by three menstrual cycles. Allah says:

وَالْمُطَلَّقٰتُ يَتَرَبَّصْنَ بِاَنْفُسِهِنَّ ثَلٰثَةَ قُرُوْٓءٍ (البقرة:۲۲۸)

"Divorced women shall wait concerning themselves for

three monthly periods." *- Al Qur'an II: 228*

There is a fixed term is for young (menstruating) women. Those not menstruating, past this age or in pre-puberty stage or diseased, for them the period of waiting is three months. For a pregnant woman, the term is until she delivers her baby. Allah says:

وَالّٰٓئِیْ یَئِسْنَ مِنَ الْمَحِیْضِ مِنْ نِّسَآئِکُمْ اِنِ ارْتَبْتُمْ فَعِدَّتُھُنَّ
ثَلٰثَۃُ اَشْھُرٍ وَّالّٰٓئِیْ لَمْ یَحِضْنَ ؕ وَ اُولَاتُ الْاَحْمَالِ اَجَلُھُنَّ
اَنْ یَّضَعْنَ حَمْلَھُنَّ ؕ (الطلاق:۴)

"Such of your women as have passed the age of monthly courses, for them the prescribed period, if ye have any doubts, is three months. For those who have no courses (it is the same). For those who are pregnant their period is until they deliver their burden."

- Al Qur'an LXV: 4

If divorced before being touched they have no period of waiting. Allah says:

یٰٓاَیُّھَا الَّذِیْنَ اٰمَنُوْٓا اِذَا نَکَحْتُمُ الْمُؤْمِنٰتِ ثُمَّ طَلَّقْتُمُوْھُنَّ مِنْ قَبْلِ
اَنْ تَمَسُّوْھُنَّ فَمَا لَکُمْ عَلَیْھِنَّ مِنْ عِدَّۃٍ تَعْتَدُّوْنَھَا ۚ فَمَتِّعُوْھُنَّ وَ
سَرِّحُوْھُنَّ سَرَاحًا جَمِیْلًا ○ (الاحزاب:۴۹)

"O' ye who believe! When ye marry believing women, and then divorce them before ye have touched them, no period of iddat have ye to count in respect of them. So give them a present and release them in a handsome manner." *- Al Qur'an XXXIII: 49*

Ideally How Should Mulsims Divorce

Islam has certainly permitted divorce. However, it desires that one may not exercise divorce without deliberate thought. One should decide it sincerely and after due deliberation. It would be reasonably justified when there is no way out of the difficulties experienced by one or both the parties. To safeguard against

carelessness in this matter, we will have to adopt the method prescribed in the traditions, which guide us by two instructions.

Pronounce Talaq Only in a woman's State of Purity after Menstruation.

Two particular instructions are available in the Traditions. One, talaq should not be pronounced when the woman is in a state of menstruation. Two, one should pronounce it when the woman has come out of that state and after which there has been no sexual intercourse. The wisdom behind these two instructions is evident.

During the period of menstruation, joie de vivre will be less than normal in the woman and there may even be irritability. In such an emotional condition, a woman might inadvertently act in such a way as to make her husband resentful and that resentment might provoke the declaration of talaq. As sex act is not permissible during menstruation, and as the woman may not be in the pink of health, it is not far-fetched to think that there will be zero tolerance for her lapses. Man may then take an extreme step in haste and repent at leisure.

There are many advantages in resorting to talaq in a post-menstruation period, when copulation has not taken place. One is the certainty that the woman is not pregnant having passed through menstruation. Copulation makes conception possible. The Shariah ensures the pregnancy or otherwise does not remain in doubt as it relates to several other issues. It is, therefore, necessary for man to abstain from sex during the period of purity. Another advantage is that both man and wife become inclined towards sexual gratification during the post menstruation period and this inclination encourages them to overlook mutual differences and to tolerate each other. When the opportunity for sexual gratification is availed of, the intensity of this inclination to divorce is somewhat reduced. Therefore, advice is to abstain from sex during the period of purity for the announcement of talaq. This is, psychologically speaking, easier said than done. Pronounce

talaq thrice during the three successive periods of purity without succumbing to sexual urge further aggravates the problem. Man can resolutely overcome this difficulty when he has made up his mind after seriously weighing all pros and cons.

Talaq Pro-Sunnah and Anti-Sunnah

The Qur'an and the Traditions have spelt out the methodology of the talaq. Any other methodology will be improper and not in keeping with the Shariah. The Hanafi jurisprudence has details, comparatively speaking. According to this school of thought, talaq is of two types - Pro-*Sunnah* and Anti-*Sunnah*.

Meaning of Talaq-e-Masnoon

To describe talaq as something in consonance with *Sunnah* does not mean that talaq is an act of prayer or a task fetching Brownie points. Talaq is only permission. Pro-*Sunnah* talaq follows the rules, promulgated in *Sunnah*. One can escape from sin by following those rules. If there is an urge or motive to observe innovative methodology of talaq, and yet a person either strictly observes the *Sunnah* or has a motive to uphold *Sunnah*, he deserves merit or reward. (Ibnul Hamam, Fath-ul-Qadeer: 3/447, Darul Kutbil ilmiah, Lebanon, 1955. Ibn Abideen, Radd-ul-Muhtar ala Durrul Mukhtar, 4/432, Darul Kutbil Ilmiah, Lebanon, 1994)

Better/ Superior Method

The Masnoon method has further two categories - Ahsan (Extremely Preferable) and Hasan (Preferable).

The Ahsan method of talaq is to pronounce talaq only once during the period of purity and without sex. When a woman comes out of the period of menstruation, the state of purity commences. After first pronouncement, there is no second pronouncement during Iddah (three menstruation periods). *Talaq*

after completion of iddah becomes *talaq-e-ba'yina*, which terminates the conjugal relationship. The advantage is that during the iddah man has a chance to retrieve his marriage if he so desires. If he does not revoke his pronouncement, and the period of iddah is completed, he can renew his marriage contract without halalah. It is convenient for the woman too. Both husband and wife can avoid the worrisome and embarrassing aspect of halalah.

One can pronounce talaq anytime during the state of purity and without a sexual act. If done in the initial period of purity, and both remain separate, it minimizes the possibility of sex.

The model conduct of the exalted companions of the Prophet (May Allah bless and greet him) proves this method to be *Ahsan*. Their pronouncing talaq only once is on record.

Musnaf Ibne Ali Shaiba records a statement of Ibraheem Nakh'ii.

كانوا يستحبون ان يطلقها واحدة ثم يتركها حتى تحيض ثلاث حيض

He considered it preferable to pronounce talaq only once and keep off from the woman (and not to have sex with her) until three periods of menstruation are over (and the period of iddah is completed.)
(Zail'ii, Nasbur Rayah fi takhreeje Ahadeesil Hidayah with Al-Hidayah 3/292, Darul Kutbil Ilmiyah, Lebanon, 1996)

Another reason why this method of talaq is Ahsan is that it is non-controversial among the interpreters of the law. This method contains no element of repulsion.

Hasan Method

Pronouncing talaq thrice one each in three consecutive months, without copulation is a Hasan method. True traditions establish that one should pronounce talaq only when the woman is in the state of purity.

All the six most authentic compilations of Traditions known

by the collective name of "*Sihah*" carry reports to the effect that Hazrat Abdullah ibn Umar (may Allah be pleased with him) divorced his wife when she was passing through the period of menstruation. His father consulted the Prophet (blessings and peace be upon him) on this issue. The Prophet said,

مره فليراجعها ثم ليمسكها حتى تطهر، ثم تحيض ثم تطهر

ثم ان شاء امسک بعد و ان شاء طلق قبل ان يمس

"Tell Abdullah to revoke his pronouncement of talaq and live with his wife until she is rid of the menstruation. When she purifies after completing this period a second time, then it is on him to keep her or divorce her. If he wants to divorce, he should do so without copulation."

He also explained that the Qur'anic words dealing with talaq and iddah in chapter Talaq verse 1 carry that meaning.

(Bukhari Kitabut talaq. Vide Kitabut Tafseer, Kitabul Ahkam, Muslim Kitabut talaq; Abu Dawood, Kitabut talaq)

Dar Qutni reports that the Prophet (blessings and peace be upon him) advised Hazrat Abdullah ibn Umar (May Allah be pleased with him), "The approved practice is to talaq when a woman completes menstruation, and is in a state of purity, and then one may repeat the same only in a post-menstruation state of purity."[1]

On certain occasions, the state of purity is prolonged. A young woman may not have another menstruation period for a much longer time. The suckling period delays the onset of menstruation. Even in such exceptional cases too, when there has been an act of copulation, the husband has perforce to wait for the period of menstruation. The permission for pronouncing 'talaq'

1. This is a part of a long narration made by the companion concerned. It is stated therein that though the pronouncement of three talaqs in one sitting is a sin, it becomes effective. Some Hadith experts have reservations about it because one of the narrators, Ata Khorasani, is not above board. Another source in Tabarani is free from such a defect and so the Hanafi school of jurisprudence finds the narrations acceptable, vide, Nasabur Raya, 3/292-293, Ibnul Hamam, Fathul Qadeer 3/448-449.

is only after its onset and its completion, without sexual intercourse during the period of purity.

(Ibne Abideen, Raddul Muhtar Aladduril Mukhtar, 4/423)

Imam Malik opines that talaq in essence is a forbidden act; its permission is only by virtue of necessity; and so, resorting to talaq more than once is a reprehensible innovation. Contrary reports maintain that undoubtedly necessity justifies talaq. When a woman is in a state of purity and fit for copulation, a man resists sexual desire and resorts to talaq. Why does he do so? It is simply because he feels it is an imperative need. It is under that compulsion he resorts to talaq a second repeatedly a third time when the woman is in a state of purity.

(Hidaya with Fathul Qadeer, 3/449)

If a woman is a minor or advanced in age, she may not have menstruation. One can release her from wedlock immediately after copulation. The approved method in her case is to pronounce talaq thrice, once each month. Among the scholars of the Hanafi School, Imam Zufar holds a divergent opinion. He is of the opinion that talaq should be given a month after copulation.

There is the case of a woman with whom sex has not taken place. In this case, *Sunnah* does not demand the condition of purity in pronouncing talaq. There is permission to wave off this condition and menstruation will be no hindrance in the declaring talaq. Imam Zufar holds a different viewpoint. He seeks a uniform pattern by insisting that in her case also, talaq becomes a valid declaration only in her state of purity.

(Details taken from Hidaya with Fathul Qadeer, Vol. III, Kitabut Talaq, and from Raddul Muhtar vol. IV, Kitabut Talaq)

Rule pertaining to Talaq during Menstruation

The Prophet (blessings and peace be upon him) advised Hazrat Abdullah bin Umar (May Allah be pleased with both of them) to revoke his pronouncement of talaq which was given during menstruation and to make such a pronouncement only

when the woman is in a state of purity. What is the nature of such a revocation? Hafiz Ibne Hajr states that a majority of scholars approve of such a revocation. Imam Malik thinks that such a revocation is compulsory; Imam Ahmed agrees, according to one version, and according to another version, he thinks that it is preferable. (Ibne Hajr, Fathul Bari: 10/439)

Some Hanafi scholars agree that such a revocation is compulsory, while others look upon that act as preferable.

(Hidaya with Fathul Qadeer: 3/462)

Some scholars argue that it is permissible to repeat the declaration of talaq in the post-menstruation period soon after its first declaration during menstruation. They do not find it objectionable, as there are indications to that effect in the anecdote under discussion relating Hazrat Abdullah bin Umar. We find there is the clear instruction for him to revoke talaq and retain his wife, and to pronounce talaq after his wife passes through menstruation again, she is in a state of purity, and there is no copulation with her. One must respected this instruction as the details given are by most reliable reporters.

Among the Hanafi scholars, Imam Yusuf and Imam Muhammad hold this view. This seems to be the view of Imam Abu Haneefa too, according to some experts. A very famous report carries the same view with regard to Imam Shafi'i. Imam Malik and Imam Ahmed hold the same opinion too.

(Ibne Hamam, Fathul Qadeer: 3/463)

It is not wise of a man not to revoke the talaq given during menstruation and wait to repeat it during post-menstruation period. A wiser decision is to revoke the talaq and spend the whole purity and the menstruation periods in the company of his wife, before giving talaq. During this long waiting period, husband and wife may re-establish conjugal relations, and they may change their decision to separate. The possibility of such a pleasant change has several advantages. (Vide Fathul Bari: 10/440 for details)

Majority of scholars do not question the legal validity of talaq

given during a woman's menstruation period. However, Allama Ibne Hazm questions it. Among the later scholars, Imam Ibne Taymiah questions it too. The proof given by the majority for their opinion is that the talaq given by Hazrat Abdullah bin Umar was counted as one. (Bukhari, Kitabut Talaq; Muslim, Kitabut Talaq, see the sections relevant to talaq during menstruation)

New-fangled Talaq

After discussing talaq approved by a long practice and tradition, we mention below the details of other talaq practises (ghair masnoon/bida'i):

1. To pronounce talaq thrice without a change of place and time in one sitting
2. To pronounce talaq after copulation in post-menstruation period
3. To pronounce talaq thrice over one post-menstruation period
4. To pronounce talaq during the menstrual period
5. To pronounce talaq after copulation and during the menstrual period

(Details regarding talaq according to sunnah and talaq not according to sunnah can be seen in Hidaya with Fathul Qadeer, 3/431 and Ibne Abideen, Raddul Muhtar Alad Durril Mukhtar, 4/227 further)

Divorcee to Stay with her Husband during Iddat (Waiting)

The Qur'an has ordained that for the period of her iddat (waiting) she shall stay at the husband's house, barring cases of immodesty, which make such stay unpleasant, even impossible. Allah says:

لَا تُخْرِجُوْهُنَّ مِنْۢ بُيُوْتِهِنَّ وَلَا يَخْرُجْنَ اِلَّآ اَنْ يَّاْتِيْنَ بِفَاحِشَةٍ مُّبَيِّنَةٍ (الطلاق:١)

"And turn them not out of their houses, nor shall they

(themselves) leave, except in case they are guilty of some open lewdness." - Al Qur'an LXV: 1

The underlying wisdom here is that living under the same roof man may be inclined to revise his decision and the woman to change her attitude. Who knows they may even indulge with each other and after revoking and reconciliation live together as husband and wife.

Acting on all these instructions together is likely to reduce possibilities of undue haste and heedlessness in divorce. Moreover, if even in spite of failure in the first and second stages divorce becomes imminent, man may yet have a chance to review his earlier decision and opt for revocation.

The Right of Revocation and its Exercise

After divorcing once or twice before the expiry of the term, one can still exercise the right to revoke it. If pronounced in unequivocal terms, revocation will be effective based on its unanimity. Imam Shafi'i says opines revocation to be verbal. Hanafite School opines kissing, embracing and copulation also its indication. Imam Shafi'i insists on witnesses to pronunciation of revocation. Hanafites, however, call it desirable and preferable. Imam Malik too holds the same.

(Hidayah: 2/375. Bedayatul-Mujtahid: 2/92)

After one or two pronouncements of divorce if man does not revoke within the specified period, parting of husband and wife becomes effective just after the expiry of the iddat. However, if man is desirous of their reunion and the wife too is willing, they can come together through nikah with a fresh mahar. However, in case the wife does not consent to such a union, one cannot thrust it upon her.

The third pronunciation of divorce completes their separation. This bars them from conjugal reunion unless the woman marries another man and gets divorce or is widowed. Only then, can she

marry her former husband. Allah says:

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ ۗ فَإِنْ طَلَّقَهَا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَاجَعَا إِنْ ظَنَّا أَنْ يُقِيمَا حُدُودَ اللَّهِ ۗ وَتِلْكَ حُدُودُ اللَّهِ يُبَيِّنُهَا لِقَوْمٍ يَعْلَمُونَ ○

(البقرہ:۲۳۰)

"So if a husband divorces his wife (irrevocably) he cannot, after that, remarry her until after she has married another husband and he has divorced her, in that case there is no blame on either of them if they reunite, provided they feel that they can keep the limits ordained by Allah. Such are the limits ordained by Allah, which He makes plain to those who know."

- Al Qur'an II: 230

This lengthy procedure makes reunion after three pronouncements of divorce a cumbersome job. Man's unsullied nature too abhors it. This rather severe check is to ensure that the person intending to indulge in it heedlessly may have a chance to give it a serious thought before a hasty decision. Reunion may not always be possible even after adopting the prescribed course.

Pronouncing Talaq Thrice in one Go

At this stage, a question arises. If a person, instead of divorcing in three intervals of cleanliness or once every month, pronounces all three in one breath as an outburst, shall he be entitled to the right of revocation or are the three pronouncements irrevocable?

According to the generality of the jurists, three at a time make the divorce irrevocable and the person guilty shall stand deprived of his right of revoking as under the normal course. The jurists of the Ahl-e-Hadith school take it under the revocable category. Now this is a subject of debate between them and other groups of jurisprudence. However, there is a consensus on it being a serious violation of the Prophet's *Sunnah* and is highly

undesirable. The Hanafite Fiqh has coined a term "*The inventive divorce*" since it is in direct contravention of the Sunnah. According to them, the nice way to do so was to pronounce divorce only once and if the iddat passes off, at least there is a chance of reunion through nikah anew. They say that the companions of the Prophet s.a.w. never divorced more than once. (Those intending to make it final for separation can let the iddat pass and that is the end of the whole affair).

Three divorces in a single sitting are generally the outcome of momentary anger or any other disagreeable incident difficult to put up. There is no cool calculated decision behind it. The erroneous and accidental step results in serious consequences, and the person concerned witnesses the ruination of his onetime happy and peaceful home. His lamentation and grief cannot avail him aught. The remedy lies in the way of the *Sunnah*, which is free from all complications. Divorce at times becomes inevitable. However, the Islamic way is the safest way and must reach the ignorant masses as the remedy of this social evil. Its general adoption will also remove the objections levelled against the abominable practice.

Chapter 10

Maintenance of the Divorcee

One of the objections against the Islamic Law of divorce is that merely pronouncing the word 'divorce' throws the woman out of his house, helpless and at the society's mercy. This objection is very old and carries little weight. However, people mention it repeatedly as a great challenge to the Islamic *Shari'ah*, which has nothing in its support. Islamic scholars repeatedly brought to focus its evident hollowness. Nevertheless, no explanation can satisfy those whose main objective is to criticize the opponent, without ever listening to them. They wish people to accept their objections and do away with the imaginary flaws in the Shari'ah, and thus set the law 'right.' They argue that the highest punishment for divorcing his wife is to compel him to continue paying her maintenance charges life-long. However, in cases of her second marriage, employment, or self-support she may release her husband from that imposition. One of the more recent verdicts of the Supreme Court, in a way, declared this objection justified and has given legal sanction to the proposed demand of lifelong maintenance for the divorcee, or until her second marriage. So we feel obliged to take up this problem in some detail.[1]

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1. The case in which this decision was pronounced is in brief some thing like this: Muhammad Ahmad Khan wedded Shah Bano in 1932. After 43 years of (uneventful) married life in 1975, the husband turned his wife out of his house. In April 1978 Shah Bano Begam filed a suit against her husband in the court of the Judicial Magistrate, Indore (Madhya Pradesh) seeking redress under Article 125 of the I.P.C., claiming Rs. 500/- p.m. as her maintenance charges. On Nov. 6, 1978, Muhammad Ahmad Khan divorced Shah Bano Begam irrevocably. In his rejoinder to the complainant's demand for maintenance, the argument put forth by Muhammad Ahmad Khan was that after irrevocable divorce the complainant was no more his wife and hence no maintenance was due to her. In August 1979, the Judicial Magistrate in his decision directed Muhammad Ahmad Khan to pay Rs. 25/ p.m. as

Some Evils

1. If a person were to demands transfer of his economic responsibilities to an utter stranger, the world will either take it to be a joke, or that he has a cracked nut, because for such a transfer of one man's burden to another, there must be some basis. One finds no such basis between two utter strangers. According to Islam, one of the bases on which rests the responsibilities is *nikah*. After entering the tie of wedlock, the woman devotes her time to meet the wide-ranging demands of the conjugal life and applying her capabilities and energies to it. In return for this, man undertakes the responsibility of her maintenance. The responsibility lasts so long as they hold to this marriage tie. Divorce snaps this tie and the man on his part gets release from this economic cooperation. A certain remoteness and alienation creeps in between the two. If the divorce is irrevocable, the alienation is so vehement that it becomes easier for the woman to wed another man and for the man to wed another woman than for, these two persons estranged by divorce to reunite. In case of their desire to unite once again, Islamic Shari'ah demands that the woman should wed another man and he divorces her or dies before she can marry her earlier husband. Without adopting this tedious course, they cannot revert to their former relationship of husband and wife. Where divorce generates such alienation and

maintenance. On behalf of Muhammad Ahmad, request was made to the High Court, Madhya Pradesh, for review of the lower court's decision. The High Court not only maintained status quo but increased the maintenance charges from Rs. 25/ to Rs. 179.20. Against this decision of the high Court, Muhammad Ahmad filed a special appeal in the Supreme Court of India. A constitutional Bench comprising five judges, after prolonged hearing, corroborated the Madhya Pradesh High Court, dismissed the appeal and maintained its (lower court's) decision that divorced wife had a right to maintenance even after the period of iddat had elapsed. This decision came to the public notice in 1985. (Courtesy Urdu Weekly, Da'wat, Muslim Personal Law Number, June 16, 1985 issue , Introduction to the Shah Bano case).

Laudable indeed is the attitude of Shah Bano that when she learnt that the Supreme Court's decision, though in her favour, being in contravention of the Islamic Shari'ah, requested the court to take back its decision, thus establishing a glorious example. (Qaumi Awaz, Urdu Daily, Nov. 16, 1985)

remoteness, taking them farther than utter strangers, who is to impose whose rights on whom and who is to undertake the responsibilities of whom?

2. It comes to divorce between husband and wife only when they are negligent in the matter of their responsibilities and do not recognize the rights on a mutual basis. When it comes to this, there is hardly any cooperation and partisanship in the domestic life. Non-cooperation and conflict come to stay. However, one usually talks of divorce as though it were an excess, a tyranny on the part of the husband, and the woman has nothing to do with it. Whereas one cannot rule out that, the woman might have created conditions, compelling man to divorce her. Despite all this, imposing the maintenance of woman on man for the lifetime is a grave injustice to him, which one cannot justify.

3. After divorce and separation, when the woman is not prepared to cooperate with the man, likewise man naturally is desirous of throwing away the burden of his responsibilities relating to her. If even after divorce, the economic responsibility of the woman remains resting on him, abstaining from divorce would have been more useful to him. Instead of divorcing and yet remaining burdened with woman's responsibilities, he would have been prepared to keep her suspended without divorce, depriving her of all her due rights. Some people take it for granted that a suspended woman can also demand her maintenance through legal action. However, one must bear well in mind that it is not so easy to have one's rights relegated to him through legal procedure. The other consideration should be that man would like to escape from it and there are so many outlets for him. Thirdly, where does the wisdom lie in making divorce so difficult just by the imposition of maintenance of the divorcee that a person for fear of payment of the upkeep of the wife may abstain from divorce, keeping her suspended? To perpetuate one mistake, committing another is not at all reasonable.

4. After divorce, both man and woman are at liberty to

choose another partner for them, thus filling this void created by divorce. However, if even after divorcing her he has to bear the burden of the divorcee, the husband can hardly venture on a second experiment in matrimony. Compared with the total expenditure of the divorced woman and the new wife, he would rather think of and decide on a life of celibacy. This is most likely to make him morally corrupt and inclined to a career of dissoluteness.

5. There is an equal chance of the woman taking to the disagreeable and prohibited paths. If there is assurance of a woman's maintenance on a regular basis, even after divorce, she may be inclined to play the role of the naughty girl by vexing the husband off and on and prompting him to divorce her. That is why we find that one of the promptings to divorce on a large scale is the wife's surety about the regular receipt of her maintenance from the husband all her life. Islam regards the tendency to divorce wrongful. It cannot support any rule or regulation, which promotes a tendency in which one seeks to counter every minor unpleasantness through divorce.

6. There is another aspect to it too. Divorce alienates man and woman. Continuance of maintenance mitigates this estrangement; wounds caused by separation gradually heal, meetings become frequent with time, and display and declaration of familiarity and love increases. Since there is no bashfulness between them in the matter of sex relations, this recent familiarity and frequent meetings take a wrong direction. One can never condone maintaining a situation, which is likely to lead to moral turpitude.

One possible rejoinder to this effect is the prevention of direct contact between the two through proper arrangement of intermediation. However, in so far as they live in close neighbourhood this will be difficult to ensure. Many untoward consequences are on record. Therefore, they often start living together as husband and wife as of old. The society too is

indulgent in this abominable affair. The demand of the temperament of the Islamic *Shari'ah* is to avoid creating such conditions for any one that help and promote their advances towards dissoluteness, and yet remain almost oblivious of their direction or approach.

These are some of those social evils and complications that spring from declaration of the compulsive payment of the divorced woman's maintenance. It is not easy to overlook and carelessly brush them off as mere whims.

The Rights of the Divorcee

Some people earnestly desire that they could somehow trace the life-long maintenance of the divorcee to the Qur'an. However, their difficulty is that the Book of Allah does not at all allow them even to humour on this issue. In case of divorce, problems of woman's dower, maintenance and iddat or waiting present themselves. The Qur'an and the traditions of the Prophet have definite injunctions in this regard. The only thing missing here is the incessant maintenance of the divorced woman.

1. Mahr (Dower)

We have discussed mahar earlier in these pages. There are four different situations relating to payment of mahar. Mahar is fixed and consummation a certainty, full amount of dower falls due to woman. Mahar is not fixed but the husband has gone unto her, entitling the woman to a dower rife in her family. Mahar is fixed but no consummation occurs. The dower due is just half of that payable after consummation. Moreover, in a case where there is neither fixation of mahar nor copulation, the woman will get mata' or some sort of parting gift from the husband.

(For details see in this very book, Mahar and related ordainments)

2. Iddat Specified

The following are some of the verses of the Qur'an, which specify Iddat.

> *"In case of divorce after consummation iddat is the term of three periods."* *-Al Qur'an II: 228*
>
> *"It is only three months in all those cases where menses are absent either due to early age, pre-puberty, or advancing senility or menopause."* *-Al Qur'an LXV: 4*
>
> *"And there is no iddat for a woman who has been divorced before consummation."* *- Al Qur'an XXXIII: 49*
>
> (See the heading The issue of Divorce)

3. Maintenance for Iddat Only

Now taking up the problem of maintenance and lodging:

Divorce is of two types - revocable in which the husband has the right of revocation and irrevocable in which that the husband loses this right. The laws relating to both are in brief like this:

a. In case of revocable divorce, the jurists are unanimous on it that the woman is entitled to both her maintenance and lodging.

b. They are one here also on the issue that when the woman is pregnant, she gets both board and lodge regardless of the nature of divorce - revocable or irrevocable. The Qur'an says:

وَإِنْ كُنَّ أُولَاتِ حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّىٰ يَضَعْنَ حَمْلَهُنَّ

(الطلاق:٦)

> *"And if they are pregnant then spend (your substance) on them until they deliver their burden."*
>
> *- Al Qur'an LXV: 6*

c. If the woman is not pregnant and the divorce is irrevocable Imam Ahmad, Da'ood Zahiri, and Abu Thaur with some others are of the opinion that neither her maintenance nor lodging is due from the husband. They take their cue from the report about Fatimah bint Qais. She says: "My husband divorced me irrevocably. The Prophet s.a.w. pronounced on it, 'you are not entitled to maintenance from your husband now'." (Muslim,

Kitab-ut-Talaq, Babul Mutallaqatil Bain la Nafqata Laha) In another report the word 'lodging'(Ibid) accompanies 'maintenance'.

Imam Malik, Imam Shafi'i and some others are of the opinion that since the Qur'an has mentioned 'lodging for her' she will get it but no maintenance. Ibn Rushd, a Malikite, declares it (Maliki opinion) weak and vacillating.(Bedayatul Mujtahid: 2/103) The Hanafite School appears to have a strong stand.

d. The Hanafite school and some other 'ulama think that irrespective of the nature of divorce the woman will get both the maintenance and lodging, their argument being that since the Qur'an had expressly mentioned lodging the maintenance naturally follows, being an accompaniment of (somebody's stay). The Qur'an has made it binding on the husband to provide lodging for the term of the iddat, her support too naturally falls due on him; lodging makes maintenance inevitable. The diction of the Qur'anic verse supports the arguments:

اَسْكِنُوْهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِّنْ وُّجْدِكُمْ وَلَا تُضَآرُّوْهُنَّ لِتُضَيِّقُوْا عَلَيْهِنَّ (الطلاق:٦)

"Let the woman live (in iddat) in the same style as you live, according to your means: annoy them not so as to restrict them." *- Al Qur'an LXV:6*

Jassas says that the words of the Qur'anic verse are general in nature covering both the revocable and the irrevocable. The words "according to your capacity"(Zamakhshari, Alujdo, Al wuso Wat-Taqato, Al Kashshaf: 2/1497) point to the fact that lodging in the property of the husband is compulsory. This naturally demands the right of maintenance also (equally) compulsory, since lodging is a part of maintenance. In addition, the instruction that "she should not be annoyed to restrict her," means that annoyance and restriction are just as much applicable to maintenance as they have been said about the problem of lodging.(Jassas, Ahkamul Qur'an : 3/565)

The report about Fatimah bint-e-Qais stands cancelled on

the plea that 'Umar r.a.a., the second rightly guided Caliph, did not accept it. He records

لانترک کتاب الله و سنة نبينا صلى الله عليه وسلم لقول امرأة لَا ندرى لعلها حفظت او نسيت لها السكنى والنفقة.

(مسلم، کتاب الطلاق، باب المطلقة البائن لانفقة لها)

"For the sake of a woman's statement we cannot abandon the Qur'an and the Sunnah of the Prophet s.a.w. Allah alone knows whether she remembers it (right) or has forgotten it. There is lodging as well as maintenance for the divorcee."

(Muslim, Kitab-ut-Talaq, Babul Mutallaqatil-Baine, La Nafaqata Laha)

That means according to 'Umar r.a.a., the Book of Allah and the Sunnah of the Prophet both allow lodging and maintenance both to the divorced woman. (For detailed discussion on this topic see: Bedayatul Mujtahid: 2/102,103 Jassas: Ahkamul Qur'an: 3/564-570. Ibn Qudamah, Al Moghni: 7/606-610)

It is now evident because of this authority that the maintenance and lodging of the divorcee is binding on the husband for the term of her iddat, but nothing after that.

Mata' for the Divorcee

Those who try to prove the maintenance for the divorcee by the Qur'an, present the following verse in their support:

وَلِلْمُطَلَّقٰتِ مَتَاعٌ بِالْمَعْرُوْفِ حَقًّا عَلَى الْمُتَّقِيْنَ○ (البقرہ:۲۴۱)

"For divorced women is a suitable gift. This is a duty on the righteous." *- Al Qur'an II: 241*

One of the arguments derived from this verse is that it makes payment of mahar and mata' compulsory. After divorce so long as she lives, she should get this mata'to subsist. The Qur'an has mentioned mata' but not specified it, leaving it to popular usage. That means it is not definite and is according to the custom of any particular age. According to these advocates, fixation of this mata'

in the form of maintenance for her life-term or until second marriage, it would be according to the dictates of the Qur'an and not in contravention of it. Its payment may be in a lump sum or in instalments (according to the convenience of the parties) but he must pay.

This quaint sense of mata' is neither supported by the Arabic lexicon nor the context of the Qur'an, nor the companions of the Prophet, their followers (tabi'een) and the jurists of the Muslim *Ummah* take it to mean maintenance. To understand fully the sense of usage of this word mata' or muta'ah in the foregoing Qur'anic verse, the following questions we must deliberate on the following questions:

i. What is mata'?

ii. Is it moral or legal in nature?

iii. If legal, is it so for every divorced woman in general or some particular ones?

The Literal Sense of Mata'

Literally mata' means petty personal effects and things serving some purpose only for a brief span of time. Zahri says:

المتاع فی اللغة کل ما انتفع به فهو متاع (لسان العرب مادہ متع)

Mata' literally means something that can be utilised beneficially. (Lisan-ul-Arab, (root 'M'-ta-'a)

Imam Raghib says:

المتاع انتفاع ممتد لوقت (المفردات فی غریب القرآن: مادہ متع)

To derive benefit for a short time is mata'.

(Al Mufradat fi Gharib-il-Qur'an (root m-ta-'a)

He further goes on to say:

کل ما ینتفع به علی وجه ما فهو متاع و متعة (حوالہ سابق)

Every thing from which one can be derive benefit of any sort whatsoever is mata'or mata'ah. (Ibid)

Imam Razi says:

اصل المتعة والمتاع ما ينتفع به انتفاعا غير باقٍ (تفسیر کبیر: ۲/۲۸۴)

mata'ah and mata' is in fact something that serves and benefits but not for long (transient).

(Tafseer-e-Kabeer : 2/284)

The Use of Mata' in the Qur'an

The Qur'an uses the word mata' to denote various utility articles - things of daily use in houses, for instance it directs the strangers to borrow the articles of daily use in the following manner:

وَإِذَا سَأَلْتُمُوهُنَّ مَتَاعًا فَسْئَلُوهُنَّ مِنْ وَّرَاءِ حِجَابٍ ط (الاحزاب:۵۳)

"And when ye ask (his ladies) for anything ye want, asks them from before a screen. -Al Qur'an XXXIII: 53

Metallic substances such as utensils and implements:

وَمِمَّا يُوْقِدُوْنَ عَلَيْهِ فِي النَّارِ ابْتِغَآءَ حِلْيَةٍ اَوْ مَتَاعٍ زُبَدٌ مِّثْلُهُ

(الرعد:۱۷)

"Even so from that (ore) which they heat in the fire to make ornaments or utensils therewith, there is a scum likewise. - Al Qur'an XIII: 17

In Surah Yusuf (Q. XII: 79) it has been used for a bowl or a measure and at another place it has been used for the hunter's tackle and personal effects and in Surah Ma'idah (Q. V: 17) it has been used for water game.

Similarly, along with these things of meagre importance, all those useful articles and substances of supporting life have been termed mata'. The Qur'an says:

وَلَكُمْ فِي الْاَرْضِ مُسْتَقَرٌّ وَّ مَتَاعٌ اِلٰى حِيْنٍ ط (البقرة:۳۶)

"On earth your dwelling place and your means of livelihood for a time. - Al Qur'an II: 36

The entire world with all its paraphernalia, including articles

of luxury are referred to as mata'.

وَ اِنْ كُلُّ ذٰلِكَ لَمَّا مَتَاعُ الْحَيٰوةِ الدُّنْيَا وَالْاٰخِرَةُ عِنْدَ رَبِّكَ لِلْمُتَّقِيْنَ○ (الزخرف:٣٥)

"... (and also adornments of gold). But all this was nothing but enjoyment of the present life: The Hereafter in the sight of thy Lord is for the Righteous.

- Al Qur'an XLIII: 35

Here, compared with the Hereafter life, the worldly existence had been termed as mata'. What is meant is that in keeping in view the life-eternal, Hereafter, and the bounties of the Benevolent Lord, this world and its riches and luxuries appear 'Mata'-e-Qaleel' (very very little or almost nothing).

وَمَا الْحَيٰوةُ الدُّنْيَا فِى الْاٰخِرَةِ اِلَّا مَتَاعٌ (الرعد:٢٦)

"But the life of the world is but little comfort compared to the Hereafter."[53] - Quran XIII: 26

At another place, it says:

وَمَا الْحَيٰوةُ الدُّنْيَا فِى الْاٰخِرَةِ اِلَّا قَلِيْلٌ○ (التوبہ:٣٨)

"But little is the comfort, as compared with the Hereafter."

- Al Qur'an IX: 38

Mata' in the Context of Divorce

Now let us see what the mata'of divorce means. The Qur'an ordains mata' of divorce is absolute without any conditions. It has not been specified what is meant by 'mata'. It is evident, that even considering it compulsory, anything of any value whatsoever given after divorce, fulfils this demand.

The scholars, who have laboriously investigated the true sense of the words used in the Qur'an and the traditions of the Prophet, do not for a moment take it to mean that maintenance is to be paid to the divorced wife life-long or she may be supported for a specified period even. According to them, it means that the

husband should present her with some gift to please or console her in her grief.

Imam Raghib, who is a linguist of high standing where Qur'anic terminology is concerned, says about mata'-e-Talaq:

... فالمتاع والمتعة ما يعطى المطلقة لتنتفع به مدة عدتها

(المفردات فی غریب القرآن مادہ 'متع')

Whatever the husband confers on his divorced wife for her benefit is mata' or muta'ah.

(Al Mufradat fi Gharib-il-Qur'an (root ma-ta-'a))

That means he regards the maintenance during the period of iddat mata' and does not consider her entitled to any other mata'. (We present the opinions of the jurists a little later).

An expert lexicologist of the diction of Hadith, Allamah Ibn Atheer elucidates the term "mata'-e-Talaq" in these words:

ويستحب للمطلق ان يعطى امرأته عند طلاقها شيئا يهبها اياه

(النہایہ فی غریب الحدیث: ۴/۷۶ مادہ متع)

It is desirable for the person divorcing his wife that at the time of parting of ways he should give her some sort of gift.

(An-Nihayah fi Gharibil Hadeeth : 4/76 (root ma-te-'a))

Allamah Suyuti prepared an abridged edition of Ibn Atheer's book on the lexicon of the Hadith. In his book, he mentions:

متعة الطلاق اعطائها شيئا يجبر به كسرها

(الدر النثیر علی ہامش النہایہ مادہ 'متع')

Mata'-at-Talaq simply refers to present to the woman something to console her in her grief.

(Ad Durrun-Nasheer Ala Hamish-in-Nihayah (root ma-ta-'a))

The Context in which the Qur'an has mentioned it also devotes the purpose behind it. It is said that

"The woman divorced before consummation shall be entitled to half her fixed dower, and the one with dower unfixed shall get only mata' or a gift."

- Al Qur'an II: 236-237

Now, if the dower does not mean life-long maintenance, how can a mata' come to mean life-long support of the divorcee?

Mata' Not to be Taken as Maintenance

The word mata' cannot mean maintenance for a life-term for two reasons:

a. The Qur'an has specified that after divorce, the maintenance and lodging of the woman shall be the liability of man for the term of the Iddat and there it ends. To make it binding on man after the expiry of the iddat for the lifetime of the divorcee or her second marriage would be an addition to the divine injunction, which is highly objectionable. The liability from which Allah declared him free in view of the many considerations to overburden him once again with the same would be a wilful disregard of those considerations.

b. We discussed earlier in detail that the responsibility of the wife's maintenance in return for her services to the household devoting her time and energy to run it efficiently. After the divorce, since she is relieved of that duty and the man has no more claim over them, on what basis can she claim further support and maintenance.

The Opinions of the Companions and Their Followers

Let us now try to find out what was the practice of the companions and their followers in this behalf. Abdullah Ibn Abbas r.a.a. says that the highest standard of the mata' is a slave for the divorcee. a level lower is a suit (three piece) and the least is some silver (money), which according to Abdullah Ibn 'Umar r.a.a. should at least be thirty dirhams.

Among the tabi'een, Qazi Shuraih has fixed mata' at five thousand dirhams. Imam Sha'bi has declared it to be the woman's dress used inside her house, a quilt and jilbab. Hasan Basri says that there is no fixed amount for mata'. Everyone will provide it

according to his capacity. Ata ibn Abi Ribah has also said more or less the same thing.

There are also examples of benevolent elderly persons who went out of their way in cooperating with the divorcee'.

Abdullah bin Auf r.a.a. gifted a black slave girl when he divorced one of of his wives, Tamadhar.

There has also been a report of Hasan r.a.a. that he gave ten thousand dirhams as mata' to one of his divorced wives.

(To verify these statements consult Tafseer Ibn Jaree vol.2 /205-304, Tafseer Ibn Catheer 288, al-Muhalli Ibn Hazm 10/248)

These and many similar examples portray generosity and beneficence. However, it is not appropriate to generalize them as law.

Jurists' Viewpoint

The jurists have tried to pronounce upon it according to the circumstances extant then.

The Hanafite School recommends for the divorcee a change of clothes (usually a three pieces of cloth) but left to the prevailing trends of the times. The standard and quality of cloth will depend on the husband's life style and standard of living. Another group opines taking into consideration the standard of life of both the husband and wife. The Hanafites, besides, have consensus on it that mata' cannot exceed half the 'mahr-mithl' since it is in lieu of it, i.e. not less than five dirhams either,[1] (since according to the Hanafite school, the minimum of dower is ten dirhams). If one takes it to be half of the dower in vogue, it can be more than the cost of dress.

In Malikite jurisprudence, whatever a person gives, after divorce to his wife in keeping with his financial status in Muta'ah.[2]

Imam Shafi'i specified muta'ah thus: For a man of substance a

1. Raddul-Muhtar alad-Durril-Mukhtar: 2/462
2. Al-Sharah-us-Sagheer: 1/616

servant and for a person of the middle class a change of clothes. The minimum prescribed for it is thirty dirhams or something of that value. Moreover, the husband and the wife have the right to any agreement on more or less than that.

(Baghavi, Ma'alim ut-Tanzeel: 1/204, Khateeb Sharbeeni : Al-Sirajul Muneer : 1/153)

The Hanbalite School presents more or less the same point and pronounce that muta'ah shall be that which man's status permits. The higher standard of it is a servant and the minimum is a dress that can suffice her for her prayer (a three-piece suit including a sheet). The husband can endow her with more than that at will and the woman can accept less than that if she is so pleased. (Ibn Qudamah : Almughni : 6/6/7)

The Jurists have tried to fix mata' according to the then existing conditions and adjustments can be made under changed conditions in a particular age. The Qur'an and the Hadith have left mahar and nafqah (maintenance) unfixed, so has muta'ah remained unspecified, depending on the conditions through the ages. On the difference of opinions among the companions and the tabi'een, Allamah Abu Bakr Jassas has opined:

هٰذه المقادير كلها صدرت عن اجتهاد آرائهم ولم ينكر بعضهم على بعض ما صار اليه من مخالفته فيه فدل على انها عندهم موضوعة على ما يؤديه اليه اجتهاده (احكام القرآن:١/٥١٥)

"The stated quantum of Muta'ah is the ijtahadi opinions of our ancestors. None questioned the opinion of another since he himself held a different opinion of his own. That shows they were their own considered opinions (ijtahad)." (Ahkam al-Qur'an 1/515)

According to some jurists, in fixing muta', one must consider the social and economic status of only the man and not the woman, since the Qur'an declared that:

"The moneyed shall endow muta'ah according to their means and the poor according to their means."

- Al Qur'an II: 236

However, the more agreeable opinion is that in apportioning muta'ah, the consideration should be for the status of both. Jassas says that "sticking to m'aroof (pious popular opinion) has been stressed concerning muta'ah. Overlooking the status of woman is against m'aroof, and a lady of an affluent family be treated like a poor common woman in the endowment of muta'ah"

(For details see : Ahkamul Qur'an : 1/513-515)

The foregoing discussion makes it amply evident that muta'ah refers to the items gifted according to status to a divorcee as a mark of sympathy and to console in her grief. Trying to enlarge its scope and stretching it to life-long maintenance is an excess that one cannot expect of any serious and reasonable person.

Obligation to pay Mata': Moral or Legal

Let us now take up the question whether mata' enjoys only a moral position or it is legal in nature. The point of view of Imam Malik on this issue is that it is agreeable to give the divorced woman something by way of gift. It is not a compulsory obligation. His argument rests on the Qur'anic words "This is a duty on the righteous," as the closing phrase of the verse. The preceding verse (II: 236) points out muta'ah as piety and Ehsan in the closing words. We cannot declare anything exemplifying taqwa and ehsan obligatory for all.

(Ahmad Al Darweer, Al-Sharah-us-Sagheer : 217/218)

Among the tabi'een, Qazi Shuraih was also of the same opinion. One report records that a person divorced his wife after consummation. She filed a suit in the court of Qazi Shuraih claiming muta'ah. The Qazi persuasively remarked during his talk to the husband that he should not deny himself the enviable position of joining the ranks of the righteous and the pious. However, he did not compel him for muta'ah.

(Baghawi : Ma'alim ut-Tanzeel. 'Ala Hamish il-Khazin : 1/204)

According to Imam Malik, the woman divorced before consummation but with dower fixed, shall get half the fixed dower

but shall not be entitled to muta'ah.

One of the reported opinions of Imam Malik that muta'ah considers muta' obligatory, but his well-known opinion is the one stated above. (Sharah-us-Sagheer: 2/617)

The majority of the jurists regard muta'ah obligatory for the divorcee. They argue that the Qur'an uses the words "matt-i-'u-hunna" (give them mata'h - Q. II: 241). It obligatory except for there is contrary evidence. Quran says: "For the divorced women, there is mata'h," which also indicates obligation. Further, the phrase "For the divorced women" indicates that it will be their property, and therefore, they could demand it.

The words "*this is a duty on the righteous.*" (Q. II: 241) also suggest on its obligatory nature. It implies that muta'ah is obligatory on the righteous. To further stress it, it has been said, "*is due from those who wish to do the right thing*,"(Q. II : 236).

Can it possibly mean that it is binding only on those who fear Allah and wish to do the right thing and not others? In response to this query, Allamah Abu Bakr Jassas has proved with precepts from the Qur'an itself that it does not at all mean to eliminate those who are not righteous. It is there just to stress on the command and that it may be further persuade people to this righteous deed, and thus elevating themselves to the ranks of the righteous and the pious. (For the entire discussion in detail see : Jassas, Ahkam-ul Qur'an: 1/508-509)

Is Mata' Obligatory for Every Divorcee?

Now the question arises that if Muta'ah is obligatory in nature, is it so for every divorced woman or obligatory for some and not for others.

The Hanafite Fiqh opine that muta'ah is the due of that woman whose dower was not fixed, and she got divorced before consummation. Because, it is she for whom the Qur'an has ordained it (Q. II: 236). Other divorced women get their mahar and maintenance for the entire iddat term, and therefore it is not

approvable but obligatory.(Raddul-Muhtar 'Alad-Durril-Mukhtar: 2/461-462)

Imam Ahmad too is, of the same opinion.

(For details see Ibn Qudamah; Al Mughni : 6/715)

Imam Shafi'i says muta'ah is obligatory for all the divorced women save those with fixed mahar and divorced before consummation. Qur'an is explicit about it that she will get half her fixed dower.[1](Q. II : 237) Among the companions Abdullah ibn 'Umar r.a.a. is reported to have the same opinion.

(Baghawi : Ma'alim-ut-Tanzeel 'ala Hamish il-Khazin : 1/204)

Sa'eed bin Jubair, Abul 'Aliyah, Hasan Basri, and some others r.a., have said that every divorced woman must get muta'ah as a matter of duty since (for the divorced woman is muta'ah) is a Qur'anic injunction, which is general in nature, and there is no justification for any particularisation. The idea that only those divorced women without their dowers fixed will enjoy muta'ah is also erroneous, since there was consummation as well as fixation of dower for the Prophet's s.a.w. consorts, but in case of divorce the Qur'an ordained payment of muta'ah to them. It says:

يٰٓاَيُّهَا النَّبِيُّ قُلْ لِّاَزْوَاجِكَ اِنْ كُنْتُنَّ تُرِدْنَ الْحَيٰوةَ الدُّنْيَا وَ زِيْنَتَهَا
فَتَعَالَيْنَ اُمَتِّعْكُنَّ وَ اُسَرِّحْكُنَّ سَرَاحًا جَمِيْلًا ○ (الاحزاب:۲۸)

"O Prophet! Say to thy consorts that if it be that ye desire the life of this world and its glitter then come, I will provide for you enjoyment and set you free in a handsome manner." *- Al Qur'an XXXIII : 28*

(Ibn-e-Kaseer ; Tafseer : 1/288)

This is the opinion on record of 'Ali r.a.a., Imam Zahri, Ibrahim Nakha'i, 'Ata bin Abi Ribah and Sufyan Thauri.

(Ibn-Hazm : Al Muhalla : 10/247)

As also of Zahirites. Ibn Hazam Zahiri opines compulsory entitlement of all divorced women to muta'ah, whether the divorce is revocable or irrevocable, consummation or no consummation, *mahr* fixed or unfixed, since 'for the divorced woman there is muta'ah according to the pious popular usage' is

1. Bedayatul-Mujtahid : 2/105-106

a general ordainment and it would be improper on our part to make it selective. (Ibid., p. 245)

All these opinions are similar. There could be some difference in their details. Those in favour of making muta'ah or parting gift to the divorced women obligatory may favour this (immediately foregoing) opinion, but there are several drawbacks to it.

Firstly, the woman divorced before consummation, with her dower fixed, shall get half of her fixed dower and muta'ah, and in case of non-fixation of mahar, she shall get only muta'ah, which appears to be sort of iniquity.

Secondly, declaring muta'ah compulsory would mean that like mahar and maintenance, it is also an undeniable right, which she can claim legally. Undoubtedly, as stated above, the opinion of the Zahirites and some others is in support of it. The well-known commentator of the Qur'an, Ibn Jarir Tabri, too subscribes to it, and according to him muta'ah like mahr is binding upon the divorcing husband and in case of non-payment, like mahr and other dues, the aggrieved party can sue for it in a court of Law. (For details see : Ibn Jareer Tabri : Jami'-ul-Bayan, fi Tafseer-il-Quran : 2/308-309)

This opinion appears to be unsound in view of the fact that the Islamic courts never pronounced such decisions. Imam Sha'bi says:

والله ما رأيت احدا حبس فيها (فى المتعـــة) والله لـو كانت واجبة لحبس فيها القضاة

By Allah! I never saw any one imprisoned for non-payment of muta'ah. By Allah! If it were obligatory, the Qazis would have put the defaulters behind the bars. (Tafseer Ibn-e-Katheer : 1/297)

In the foregoing pages, we discussed in detail the meaning of mata' and its legal position, and presented the opinions of various jurists in this behalf. It is amply manifest that one cannot prove on the authority of the Qur'an and Hadith that there is any responsibility of supporting the divorced wife on the husband, nor from the antiquity to posterity has any one expressed his opinion

in its favour. It is a baseless idea that finds support nowhere.

The Economic Problems of the Divorcee

Lastly, let us take up the question of the economic responsibility of the divorced woman. This question is hurled at the Muslim community in such a way that after divorce the Muslim woman finds herself in such a difficult fix to which solution has to be found anyway. Then they put forth all sorts of suggestions, delving into the Qur'an for the support of their new fangled ideas where the problems of nikah and divorce have been presenting themselves for the last fourteen hundred years. Divorce is nothing new. There have been cases from the early period of Islam and problems relating to both young and old divorcees have been dealt with. The reasonable course that should have been adopted was to find out whether Islam has presented any solution to this problem. Rather they should have expected that like so many other problems it must have provided guidance here also. And overlooking all the considerations to think rather make others believe that Islam has suggested no solution to this serious problem, the Muslim thinkers never cared to give a serious thought to it all this while, is an amazing example of sheer ignorance.

According to Islam, the relationship between the husband and wife gets snapped for good, and therefore, it has not at all associated the problem of the financial burden of the woman with the estranged husband but solved it in other ways.

1. It is a baseless proposition that if a divorced woman does not receive her maintenance from the husband, there will be no way of providing her subsistence and she is most likely to starve to death. There are probably some other motives behind this idea rather than any sympathy for the woman. Otherwise, it is a fact known even to an ordinary student of Islamic theology that under the Islamic Law there are various means financial resources for a woman, which include inheritance, mahar, legacy and others. Therefore, the possibility of her becoming financially well-off from

either or all of the above mentioned sources, guaranteeing her subsistence satisfactorily cannot be overlooked.

2. Earlier, we have convincingly proved that though the woman is not under any compulsion to undertake any economic effort for her support, there is no bar on her taking to a permitted source of earning her subsistence. She can seek employment, undertake agriculture and trade, and partake in industry. In short, she has a perfect right to undertake any economic endeavour, of course within the Islamic limits. Success in this field will enable her not only to support herself away from external aid, but can even extend a helping hand to others in need.

3. Islam regards conjugal life for man essential. It has instructed the entire society to help the individuals in taking to conjugal life.

وَ اَنْكِحُوا الْاَيَامٰى مِنْكُمْ وَالصّٰلِحِيْنَ مِنْ عِبَادِكُمْ وَ اِمَآئِكُمْ ط (النور:٣٢)

"Marry those among you who are single and the virtuous ones among your slaves, male or female."
- Al Qur'an XXIV: 32

The word occurring in the Qur'anic verse above is '*Ayama*', the plural form of Ayyum covering in its meaning both the unmarried man and woman. It also encompasses those who have not yet begun their marital life, besides those without a husband due to divorce or widowhood. There is no doubt that in the present age, the inclination of Muslims towards second marriage of the divorcee and the widow is at low ebb. But, Islam is in favour of giving it a fresh fillip and reasonably so. The Islamic teaching in this behalf is that if due to disharmony in temperament a husband and wife have parted ways or the death of one of them has closed the chapter of his or her conjugal life, a match should be found for their remarriage, since living alone permits corrupting influences on the morals and may blot characters. Acting on this teaching will itself solve the problem of the divorced and widowed

women, since in conjugal life she becomes the liability of the husband. That is why, so long as they adhered to this teaching; never did any problem of the support of the widow and the divorced woman confront the Muslim society. This is the best solution of this problem and it must be promoted.

4. If the divorced woman and likewise the widow fail to find suitors and have no means of support of their own, Islam has imposed the responsibility of their support on their families.

In this connection what should be kept in view is the principle that under the Islamic law the woman is never under compulsion to endeavor in the economic field for her livelihood. (For some details of this see, the writers book, 'Aurat aur Islam', pp. 29, 30) In the Islamic Fiqh, it has been said, "*To be a woman is enough for incapability,*" (Raddul-Muhtar 'Alad-Durril-Mukhtar : 2/925) meaning thereby that for various reasons she lacks the capacity to earn her own bread. And that is why others have to shoulder that responsibility. The husband supports her under all circumstances. After divorce if she is not self-sufficient and her progeny is in a position to work and earn their bread, it becomes charged with her support. Here it would be in the fitness of things to make it evident that according to our jurists the maintenance of the parents includes all those facilities that have come for mention under the maintenance of wife.

ان جميع ما وجب للمرأة وجب للاب والأم على الولد من
طعام و شراب و كسوة و سكنى حتى الخادم

(ردالمحتار على الدرالمختار: ۲/ ۹۳۳)

"The things included in the maintenance of wife, all those will also be included in the maintenance for the parents, namely food, clothing, board and lodging, and even a servant is also included." (Ibid. : 2/933)

If she does not get remarried after divorce and her children too are unable to undertake her support the burden of her maintenance shall be transferred to her father just like it was

before her marriage. The expositor of the famous book of Hanafite Fiqh-Hidayah, Allamah Ibn-ul-Hammam writes:

فالاناث عليه نفقتهن الى ان يتزوجن اذا لم يكن لهن مال و ليس له ان يواجرهن فى عمل ولا خدمة و ان كان لهن قدرة و اذا طلقت و انقضت عدتها عادت نفقتها على الاب

(فتح القدير: ۳/۳۴۴)

"The maintenance and support of the daughters until such time as they get married, if they are lacking in substance, is the responsibility of the father. He cannot engage them in any work or service, even if they are able to undertake such jobs." If one of them gets divorced after the expiry of the term of iddat the responsibility of her maintenance will once again revert to the father." (Fathul-Qadeer : 3/344)

In the absence of father, whoever happens to be her closest mahram (eternally, prohibited to her), such as uncle, brother and others (maternal uncle, maternal and paternal grandfathers) shall be held responsible for her support. If none of these relatives are there or are incapable of shouldering this responsibility, the Islamic state steps in to undertake her support. In the absence of an Islamic state the Muslim society should come forward to take her charge. The society of Indian Muslims desirous of solving the problem of such women can easily do so. (This remark of ours is from the Islamic point of view. Our country, India, is a welfare State and as such it is also the responsibility that those who are helpless in the matter of their economic support should receive help and support from the state)

Those who go on raising objections for their own sake, jumping from one to the next, it appears they are totally ignorant of the 'Islamic Law of Maintenance'. We have shown just a glimpse of it here. They should try to acquaint themselves with its details.

Chapter 11

The Nature of Khula'

Some people would like the woman also to have the same right of divorcing the husband which he enjoys. If she wants to get separation from the husband, there should be no hurdles in its path, and she may go her own way whenever she is pleased. According to them, Islam, in this context has not been unjust to women. While giving the right to man of divorcing a woman, it has granted to her in turn the same right in the form of Khula'. They take it for granted that if the woman returning to the husband the dower received by her, takes leave of him the act of Khula' is complete (and she is free). That is to say, Khula' is the declaration of breaking the marriage tie or nikah on the part of the woman, no matter how the husband takes it (accepts or rejects it). It is manifest in their ignorance of the nature of Khula'.[1] Here we would like to clarify its nature under the Islamic jurisprudence.

Khula' is the Right of Man

From the point of view of the Islamic Shari'ah through the agency of marriage tie or nikah the woman becomes the property of man (known as the proprietary right by virtue of nikah). Evidently, only man, and not woman can nullify this ownership. Khula' means that the man may give up his ownership in lieu of some material means. The well known Arabic compilation on lexicon, Qamus, defines it as:

ازالة ملک النکاح ببدل منها او من غیرها (فیروزآبادی، القاموس المحیط: مادہ خلع)

"To nullify the ownership by virtue of nikah in return

1. For details of the ordainments and problems of Khula' see the writers article 'Khula' and its Problems" in the Urdu Quarterly 'Tahqeeqat-e-Islami', Aligarh, Vol. 4, No. 2, April-June 1985 issue.

for the substance offered by the woman no matter who pays it, she herself or someone else."

(Faridabadi, Al Qamus-ul Muheet-root Khula')

Now taking up the opinions of the jurists Allahmah Akmal-uddin Baba`rti, after its lexicological definition has given its definition in the Islamic Shari'ah in these words:

و فی الشریعة عبارة عن اخذ مال من المرأة بازاء ملک النکاح بلفظ الخلع (العنایہ علی الہدایہ علی ہامش فتح القدیر: ۳/۱۹۹)

In the Islamic Shari'ah Khula' means to take the substance from the woman in return for ownership rights enjoyed by virtue of nikah, using the word Khula'.

(Al-Inayah 'Alal-Hidayah 'Ala Hamishe Fathil-Qadeer : 3/199)

Allamah Ibn-ul-Hammam explains it to mean,

ازالة ملک النکاح ببدل بلفظ الخلع (فتح القدیر: ۳/۱۹۹)

"To bring to an end to the proprietary rights in return for something with the word Khula'."[1]

About the use of the word Khula'a' it has been said:

Absolute use of the word Khula'a' will be taken to be 'compensatory divorce' (Divorce against some compensation).

(Raddul-Muhtar 'Alad-Durril-Mukhtar : 2/767)

These are the expositions in the Hanafite Fiqh. In Maliki Fiqh too Khula'a' has been interpreted as compensatory divorce.

(Ahmad Al-Dardeer : Al-Sharahus Sagheer 'Ala Aqrabil-Masalik : 2/518)

Qazi Baizawi Shafi'i says:

الاظہر انه طلاق لانه فرقة باختیار الزوج فهو کالطلاق بالعوض

(انوار التنزیل واسرار التاویل تفسیر سورہ بقرہ ص ۱۱۱)

1. Fathul-Qadeer : 3/199. The objection levelled against this definition is that the phrase "in return for" in it is not proper since even without mentioning this phrase man says to the woman, "I am quits with you" and the woman accepts it, Khula' shall be in order. However if mahr is meant by something in return which becomes nullified due to Khula', it may be allowed. Durrul-Mukhtar with Radd-ul Muhtar : 2/767-768. However, see Sharah-e-Waqayah : 2/123. It means that woman owes some thing in return of Khula' (Be it mahr, something of more value than that or something of less value than that). It is a legal discussion and does not affect the problem that woman does not become free from Nikah automatically.

"Apparently it is divorce since in separation the man has his say. In this way it becomes compensatory divorce." (Anwarut Tanzeel wa Asrarit Taweel in commentary on Surah Baqarah: p.111)

This makes evident enough that Khula'a' is also a form of divorce. The fact is that Islam endows man both with the right to divorce and exercising Khula'a'.

Khula' not to be Used to Exploit Women

One of the objections raised in this connection is that man in using his right of Khula' can exploit woman. If he wants to get rid of her, he would not divorce but tyrannize her so much that she may, at last, be compelled to pay him her substance for her speedy riddance. But this objection does not hold water since it is the principle of the Shari'ah that nobody can take any one else's substance by force. The woman's substance is her possession and if she voluntarily gives it to him, it is permissible to him. But taking it away from her by force against her will in the name of Khula' or on some other pretext will be strictly forbidden to him. Allamah Ibn Jareer Tabri says:

ان اخذ الزوج من امرأته مالًا على وجه الاكراه لها والاضرار بها حتى تعطيه شيئا من مالها على فراقها حرام ولو كان ذلك حبة فضة فصاعدا (ابن جریر طبری، تفسیر: ۴/۵۸۱-۵۸۲)

"The husband's taking the substance of his wife away by force or to cause her grief and pain, so that she compulsively agrees to part with some of the substance as the return for her freedom from the bondage of the husband's ownership is strictly prohibited to him, be it silver weighing a grain of barley or more than that."

(Tafseer Ibn Jareer Tabri : 4/581-582)

"In fact, he also goes on to say that if the man tries to snatch her property by wrongful means, she should try to evade him as much as she can. Succumbing to devilry without resistance will

make her guilty." (Ibid. : 4/566-567)

Allamah Rasheed Raza Misri writes:

لا يجوز للرجل ان ياخذ منها شيئا الّا برضاها من غير ايذاء منه ولا مضارة (تفسیرالمنار۲/۳۸۹)

"To take something from the woman is permissible and in as much as she gives it to him of her own free will and he on his part has not caused her grief or hurt for its possession." (Tafseer-Al-Manar : 2/389)

Now let us take up the expositions of the jurists:

The Hanafite Fiqh says that if the man compels the woman to accept Khula', divorce will be effective, but he will not be allowed the woman's property since the fair deal in this behalf is on the basis of mutual agreement and not under compulsion.

Durr-e-Mukhtar says:

اكرهها الزوج عليه تطلق بلا مال لان الرضا شرط للزوم المال وسقوطه (درالمختارمع ردالمحتار:۲/۷۲۲)

"Forcing the woman for khula' by her husband, deems the divorce in order without her substance, as any payment from her property or to annul mahar requires her willingness."

(Durrul-Mukhtar with Raddil-Muhtar : 2/722)

Maliki Fiqh too opines that after getting khula', if the woman were to sue him in a court of law that she had to agree to Khula' since he was ill-treating her and hurting her in a way, which justifies obtaining divorce, she can take back her substance given to the husband provided she produces evidence to prove his oppression and tyranny. For evidence it is enough to hear from the people living in the neighborhood that they constantly heard her being tyrannized. In the case of eye-witnesses two men or one man and two women would bear witness. For eye-witnesses even one observation is deemed enough. Rather, it has been said that

even if the man pronounces Khula' on condition that the woman would not furnish proof of his compulsion and tyranny, she can still come up with that proof after Khula'. However, divorce under Khula' is irrevocable. (As-Sharahus-Sagheer : 2/530)

Imam Shafi'i, Imam Ahmad, and others regard such a Khula' false. Ibn Qudamah, a Hanbalite writes that if somebody were to tyrannize his wife by beating her and depriving her of her maintenance as well as the sexual relation, to compel her to consent to Khula', such a Khula' shall be deemed ineffective and her husband will have to return her property. The same is the opinion of Imam Shafi'i, Ishaq and Rahawaih and others.

(Al Mughni : 7/54-55)

Islam sanctions Khula' for the reason that if the man is commits excesses or the woman does not like him, she may obtain her freedom in lieu of some appropriate compensation. It is not meant for the tyrannizing the woman by a despot husband. If such a situation arises, she can sue him in a court of Islamic Law, which will come to her rescue.

The Power of Enforcing Khulá cannot be Delegated to the Rulers

Among the multiplicity of opinions on this issue, a section also demands the powers of enforcing Khula' must be vested in the rulers so that a competent court may pronounce or refuse it depending on the presence or otherwise of reasonable grounds. This opinion was there among the ancestors also. Hasan Basri r.a. says: Khula' can be pronounced only by one in the seat of authority and rule without which it is not permissible. Muhammad bin Sireen r.a. too has quoted it from the salaf (scholars of early Islamic era). Later, Abu 'Ubaid too has adopted it. Their argument rests on the following Quranic verses.

فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ (البقرہ:۲۲۹)

"If ye (judges) do indeed fear that they would be unable to keep the limits ordained by Allah, there is no blame on either of them if she gives something for her freedom." *-Al Qur'an II: 229*

At another place it says:

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِنْ أَهْلِهِ وَ حَكَمًا مِنْ أَهْلِهَا (النساء:۳۵)

"If ye fear a breach between them twain, appoint two arbiters, one from his family and the other from hers;"

- Al Qur'an IV: 35

These Qur'anic injunctions apparently do not address the husband and wife, but the ruling administrators that if they fear violation of divine limits by the husband and wife, they must bring them to terms or affect Khula' between them. (Fathul-Bari : 9/319)

However, according to the general consensus of opinions on this issue among the jurists, intervention and decisions on part of government are not called for. Qazi Shuraih, Imam Malik, Imam Shafi'i, Imam Ahmad bin Hanbal, Ishaq bin Rahawaih and the Hanafites are one in this regard.

The following arguments have been put forth against the opinion of Hasan Basri r.a. and others:

1. This is an isolated opinion while the great majority is against it. Qatadah says that Hasan Basri has adopted it from the governor of Iraq of the Mu'awiyah regime, Ibn Ziyad. According to Hafiz Ibn Hajar, Ziyad does not enjoy the status (in religious matters) that his opinion be accepted for pursuit.

2. This opinion means that Khula' will be in order only in case there is tension and tangle between the husband and the wife,

whereas it is not essential. Khula' may be allowed merely on the dissatisfaction and displeasure of the woman against her husband. We find in the reports that the wife of Thabit bin Qais r.a.a. wanted to be separated from her husband due to the extreme disagreeableness of his. When she brought it to the notice of the Prophet s.a.w., he told her to return the palm grove given to her by Thabit bin Qais r.a.a. as her mahar, ordering at the same time Thabit bin Qais to divorce her, after taking back that date palm grove. He did not ask him whether he too had any grievance against her. (For details of this incident see : Bukhari, Kitabut-Talaq, Babul Khulae wa Kaifat-Talaq Fehe Abu Da'ood, Nisai, Ibn Majah, Chapters of Talaq)

3. Khula' is like divorce. Just as he can divorce his wife without the permission of the ruler, he can also affect Khula'. The right granted to him by Allah he cannot be divested of in favour of someone else. It would be wrong to do so. (Fathul-Bari : 9/319)

4. In a deal of Khula' man takes remuneration in return for the release of woman. The ruler's permission is not required in deals of return, sale, or purchase. (Al Mughni : 7/52)

The decision of the general consensus is also supported by the actions taken by 'Umar and 'Uthman r.a.a. Imam Bukhari says: "Umar allowed Khula' without intervention of the authority and rule." (Bukhari, Kitabut-Talaq, Bab ul-Khula')

We can find its details in the report of Abdullah bin Shahab Khaulani. According to him "during the Caliphate of 'Umar somebody had a deal of Khula' with his wife, he ('Umar) allowed it as valid." (Fathul-Bari : 9/319)

Rabi' bint Mu'auwiz and her uncle came to Abdullah bin 'Umar. Rabi'told him that during the Caliphate of 'Uthman r.a.a. she obtained her release from her husband, and when the Caliph 'Uthman r.a.a. came to know about it, he raised no objection. Abdullah bin 'Umar r.a.a. (too did not regard it as improper) and

said that "the iddat for a mukhtali'ah (separated by Khula') is the same as that for mutalliqah (divorced)."

(Mu'atta, Abwabut-Talaq'-Talaqul-Mukhtalate Mukhtali'ah)

Urwah bin Zubair says that "a person arranged Khula' with his wife during the Caliphate of 'Uthman r.a.a., and he allowed."

(Baihaqi : Al Sunan-ul-Kubra : 7/316)

That makes it amply manifest that Khula' is a matter between the woman and the man and any intervention in it on the part of the government or inviting it to intervene at any stage would not be proper.

Chapter 12

Woman's Right to Inheritance

In the Arabian society of the pre-Islamic days, inheritance was denied to women. Their argument in this behalf was that she was weak, incapable of enhancing both one's own and family's resources and a hindrance rather than an asset in defending the enemies. She could not bring home spoils of war to improve the economic condition of the household and the tribe. And so she could not be the recipient of a share in the family's substance. Similarly boys of tender age were denied any portion of the bequeathal of the family on those very grounds. Only adult young men (war-worthy) who could face the enemies in the field received their share of inheritance. (Tafseer Ibn Jareer : 4/163-164. For greater details on the topic see the writer's paper "Islam ka Qanun-e-Wirasat" Burhan' Urdu monthly, Delhi, February 1976)

Both Man and Woman have a Right to Inheritance

The Arabian society was not alone in keeping the woman deprived of her share in inheritance. The other social orders of the world on the basis of these and other pretexts kept her out of it; only the male offspring and the first-born getting away with it in its entirety. (Even in this so-called age of enlightenment with elaborate charters of woman's rights, children's rights and human rights and what not, the nations regarding themselves the most sensible and just, believe in, and act on the self-invented principle of primogeniture. It can be witnessed in broad daylight in all the vestiges of monarchies of the world. And all feudal societies do the same unashamed in this democratic age).

Islam raised its voice against this gross injustice to the weaker sex, proclaiming aloud that a woman had as much right to

her share in the inheritance. The Qur'an declared:

لِلرِّجَالِ نَصِيْبٌ مِّمَّا تَرَكَ الْوَالِدٰنِ وَالْاَقْرَبُوْنَ ۪ وَلِلنِّسَآءِ نَصِيْبٌ مِّمَّا تَرَكَ الْوَالِدٰنِ وَالْاَقْرَبُوْنَ مِمَّا قَلَّ مِنْهُ اَوْ كَثُرَ ؕ نَصِيْبًا مَّفْرُوْضًا ○ (النساء:۷)

"From what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large, -a determinate share."
-Al Qur'an IV: 7

And along with this instruction on principle, it also established the rights of men and women. Some details are to be found in Hadith and Fiqh (Islamic jurisprudence). The objection raised here is that equality has not been maintained between the sexes and man has been endowed with greater right to it than the woman. But this is a baseless objection based on ignorance of the Islamic Law of inheritance and its underlying wisdom and intrinsic value. So long as one does not have the details of this law of inheritance and their wisdom before him, it is difficult to understand it in its proper perspective, rather misunderstandings are most likely. Here we shall try to present some details of the Islamic Law of inheritance and later an attempt will be made to bring out some of its underlying wisdom.

The Right of the Boy and the Girl

Islam restricts the inheritance strictly to the family, and specifies the rights of the members of the family with gradation depending on closeness to the deceased. The first and the foremost among the shareholders is the progeny of the person leaving behind property. Allah says in the Qur'an:

يُوْصِيْكُمُ اللّٰهُ فِيْۤ اَوْلَادِكُمْ ۪ لِلذَّكَرِ مِثْلُ حَظِّ الْاُنْثَيَيْنِ ۚ

(النساء:۱۱)

"Allah (thus) directs you as regards your children's

(inheritance): to the male a portion equal to that of two females;" [1] *- Al Qur'an IV: 11*

This brings out the following points for our consideration:

1. Progeny includes both boys and girls. The inheritance is not exclusive to boys. The girls also have their right to it.

2. One boy's share shall be equal to those of two girls. Suppose the deceased has a boy and a girl. The property left by him shall be divided into three equal portions, one third going to the daughter, and two thirds to the boy. With two girls and one boy, the property shall be divided into four equal parts two parts (2/4) or half going to the two girls and the remaining half to the boy. Allah says:

فَإِنْ كُنَّ نِسَآءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ ۚ (النساء:١١)

"If only daughters two or more, their share is two thirds of the inheritance." -Al Qur'an IV: 11

This is about a situation where there is no male progeny and there are more than two girls. The girls here shall get two thirds. Here, the mention is of more than two daughters, but if they are two their portion remains the same, two thirds.[2]

1. It has been ordained that the share of two girls is equal to that of one boy and not that the share of one boy is equal to that of two girls, meaning that the basis is the share of the girls. In this way the concept of Jahiliyah (un-Islam and ignorance) that the girls are not share-holders in the inheritance, and the right concept that has been highlighted is that the really entitled progeny are the girls. But due to some reasons (of vital importance) they (boys) shall be given more than the girls. The same interpretation has been put on other ordainment of inheritance. -Tafseer-ul-Manar: 4/405

2. One argument in support of it is that with one boy where there is one girl as mentioned above, she gets one third. And when there is another girl also with her, it is but natural that her share should not be less than her sister's share (both together taking care of half the inheritance leave the remaining half for the brother).

The other argument is that the Qur'an has expressly stated the deceased having no progeny or brothers, having only two sisters, they will be entitled to two thirds (Q. IV: 176).

When two sisters get two thirds two daughters must of necessity get two thirds.

The third argument is a decision by the Prophet s.a.w., It is reported that

If there is no male progeny and only one daughter, she shall be entitled to half the inheritance. Allah says:

وَإِنْ كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ (النساء:١١)

"If only one her share is a half." -Al Qur'an IV: 11

This leads us also to the point that if there is only one boy he must get the entire property of the dead since his share is twice that of the girl. When an only girl gets half of it, the only boy, common sense demands, should get twice that or full property. However, in case or more than one boy, it will be divided among them since there is no basis for distinction between one brother and another.

The Right of the Parents

After the progeny, the parents have priority in the matter of rights to the property of the deceased. The Qur'an has stated their rights thus:

وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ ۚ فَإِنْ لَّمْ يَكُنْ لَّهُ وَلَدٌ وَّ وَرِثَهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ ۚ فَإِنْ كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ (النساء:١١)

"For parents a sixth share of the inheritance to each if the deceased left children; if no children and the parents are the (only) heirs, the mother shall get a third. If the deceased left brothers (or sisters) the mother has a sixth." - Al Qur'an IV: 11

Sa'd bin Rabi' had two daughters. After his martyrdom in the battle of Uhud, his brother took possession of the entire property left by him, depriving his two daughters. The Prophet s.a.w. made him pay two thirds of the inheritance to the daughters. (Tirmizi, Abwab-ul Fara 'iz, bab maja'a fi mirasil Banat. Abu Da'ood, Kitabul Fraiz, bab Maja'a fi Mirasis-sulb).

Here a question arises that when the portion of the two daughters is two thirds, why did the Qur'an use the words more than two/ The answer is that under the principle stated above each of the two girls will get one third, it may be the idea of any one that more than two daughters must get more than two thirds. The Qur'an negates the idea saying that even if there are more than two girls their share remains the same two thirds.

The following principles are deducible from the verse:

1. In the event of the deceased having progeny, even if it is only a boy or a girl the parents shall get one sixth. Grandsons, granddaughters, and even their descendants come under progeny.
2. In the absence of the progeny of the deceased, the mother shall get one third and the father two thirds.
3. In the absence of the progeny of the deceased, but with two or more brothers (of whatever relationship), the mother's share shall become one sixth, the rest going to the father. Brothers and sisters shall have no share whatsoever. And after stating the rights of the parents, it says:

مِنْۢ بَعْدِ وَصِيَّةٍ يُّوْصِىْ بِهَآ اَوْ دَيْنٍ ۗ اٰبَآؤُكُمْ وَ اَبْنَآؤُكُمْ ۚ لَا تَدْرُوْنَ اَيُّهُمْ اَقْرَبُ لَكُمْ نَفْعًا ۗ فَرِيْضَةً مِّنَ اللّٰهِ ۗ اِنَّ اللّٰهَ كَانَ عَلِيْمًا حَكِيْمًا ○ (النساء:۱۱)

"(The distribution in all cases is) after the payment of legacies and debts. You know not whether your parents or your children are nearest to you in benefit. These are settled portions ordained by Allah: And Allah is All-Knowing, All Wise." - *Al Qur'an IV: 11*

That means clearance of legacies and debts of the deceased shall come before the distribution of his / her property. When these two liabilities are fully settled, then only one may distribute the remaining property.[1]

1. There are four liabilities associated with inheritance:
   1. Average expenses of the shroud and burial of the deceased.
   2. Payment of debts if any.
   3. Payment of legacies if any.
   4. The remnant shall be distributed among the heirs according to the Islamic Law of inheritance.

The verse mentions debts after legacies. But it does not mean that debts shall be paid after legacies have been attended to. It simply means that legacy and debts both or whichever of these two is there, shall be met from the inheritance and then only the shares of the inheritors shall be paid. Debt is due of another person - an alien, and will have priority in his property, as it had been in the life-time of the deceased. To legate something from his

The Rights of the Husband and the Wife

Qur'an declared the rights of the husband and wife in these words:

وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِنْ لَّمْ يَكُنْ لَّهُنَّ وَلَدٌ ۚ فَإِنْ كَانَ لَهُنَّ وَلَدٌ فَلَكُمُ الرُّبُعُ مِمَّا تَرَكْنَ مِنْ بَعْدِ وَصِيَّةٍ يُوصِينَ بِهَا أَوْ دَيْنٍ ۗ وَلَهُنَّ الرُّبُعُ مِمَّا تَرَكْتُمْ إِنْ لَّمْ يَكُنْ لَّكُمْ وَلَدٌ ۚ فَإِنْ كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثُّمُنُ مِمَّا تَرَكْتُمْ مِنْ بَعْدِ وَصِيَّةٍ تُوصُونَ بِهَا أَوْ دَيْنٍ ۗ (النساء:١٢)

"In what your wives leave your share is a half, if they have no child, but if they leave a child, ye get a fourth, after payment of legacies and debts. In what ye leave, their share is a fourth, if ye leave no child; but if ye leave a child, they get an eighth; after payment of legacies and debts." - *Al Qur'an IV: 12*

The verse brings out the following:

1. The husband shall get half of the inheritance of his wife in case she has no children (from this husband or any other before that). Grandson is also progeny. There is consensus on it.
2. The husband shall get one fourth of the wife's property if she has children (from the same or some other husband).
3. The wife shall get one fourth from the property of the deceased husband if he leaves no children.

property is optional, and the obligatory payment of debts shall have priority. Legacy has been mentioned first in the verse with the purpose of impressing upon the heirs that even an optional is not to be neglected. The legacy of the deceased deserves respect and must be executed. A report from 'Ali also supports it, in as much as the Prophet s.a.w. is reported to have given precedence to debt over legacy. (Tirmizi, Ibn Majah, Darimi). It is also borne out by Hadith that legacy cannot exceed one third of a person's property. Saad Ibn Abi Waqas r.a.a. had disclosed to the Prophet s.a.w. his intention of legating his entire property and he (s.a.w.) had stopped him saying, you can bequeath one third of it, and even one third is more than enough. (Bukhari, Muslim)

4. The wife shall get one eighth if the husband leaves children after him (no matter whether born to him by this wife or any other wife).

The Right of the Step-Brother and Sister (Same Mother)

The children, parents, husband and wife shall be inheritors in every case. Others follow suit, among whom brothers and sisters have precedence. Brothers and sisters are of three kinds: 'aini, 'allati and akhyafi.[1] Among these three, 'aini (real) brothers and sisters have precedence over the other two. If they are absent 'allati brothers and sisters (same father but different mothers) shall be the inheritors. The shares of akhyafi brothers and sisters (same mother, different fathers) are defined, on which there is consensus of the ummah that they have been described in the following verse:

وَاِنْ كَانَ رَجُلٌ يُّوْرَثُ كَلٰلَةً اَوِ امْرَاَةٌ وَّلَهٗ اَخٌ اَوْ اُخْتٌ فَلِكُلِّ
وَاحِدٍ مِّنْهُمَا السُّدُسُ ۚ فَاِنْ كَانُوْٓا اَكْثَرَ مِنْ ذٰلِكَ فَهُمْ شُرَكَآءُ
فِي الثُّلُثِ مِنْۢ بَعْدِ وَصِيَّةٍ يُّوْصٰى بِهَآ اَوْ دَيْنٍ ۙ غَيْرَ مُضَآرٍّ ۚ
وَصِيَّةً مِّنَ اللّٰهِ ۗ وَاللّٰهُ عَلِيْمٌ حَلِيْمٌ ○ (النساء:۱۲)

"If the man or woman whose inheritance is in question, has left neither ascendants nor descendants, but has left a brother or a sister (Akhyafi), each one of the two gets a sixth; but if more than two, they share in a third, after payment of legacies and debts; so that no loss is caused (to any one). Thus, is it ordained by Allah; and Allah is All Knowing and Most Forbearing"." - Al Qur'an IV: 12

This means that an akhyafi borther or sister will each be entitled to one sixth. If they are more than two, they all will share one-third of the property equally. There will be no difference in

1. 'Aini are the real brothers and sisters born to a man and woman in conjugal relation, while 'allati are the step brother and sisters fathered by the same person but borne by different mothers. Akhyafi, on the other hand, are those brothers and sisters whose mother is the same woman, but they have been fathered by different persons.

'Aini' are sibbings'

the share of a brother or a sister.

The Rights of Real and Step-Brothers and Sisters (Same Father)

Quran mentions the rights of real and stepbrothers and sisters in these words:

إِنِ امْرُؤٌا هَلَكَ لَيْسَ لَهٗ وَلَدٌ وَّلَهٗٓ اُخْتٌ فَلَهَا نِصْفُ مَا تَرَكَ ۚ وَهُوَ يَرِثُهَآ اِنْ لَّمْ يَكُنْ لَّهَا وَلَدٌ ۭ فَاِنْ كَانَتَا اثْنَتَيْنِ فَلَهُمَا الثُّلُثٰنِ مِمَّا تَرَكَ ۭ وَاِنْ كَانُوْٓا اِخْوَةً رِّجَالًا وَّ نِسَاۗءً فَلِلذَّكَرِ مِثْلُ حَظِّ الْاُنْثَيَيْنِ ۭ يُبَيِّنُ اللّٰهُ لَكُمْ اَنْ تَضِلُّوْا ۭ وَاللّٰهُ بِكُلِّ شَيْءٍ عَلِيْمٌ ○ (النساء:۱۷۶)

"If it is a man that dies, leaving a sister but no child, she shall have half the inheritance: If (such a deceased was) a woman who left no child, her brother takes her inheritance: If there are two sisters they shall have two thirds of the inheritance (between them). If there are brothers and sisters, (they share) the male having twice the share of the females; Thus doth Allah make clear to you (His Law), lest ye err, and Allah hath knowledge of all things." -All Qur'an IV: 176

This shows that if the deceased has a son (grandson and male progeny in the descending order) or father, grandfather, or others in the ascending order, the brothers and sisters shall have no share in the inheritance. In the diseased does not have living progeny or parents, the division of inheritance shall be along the following lines:

1. If only one sister she will get a half.
2. If only one brother, he will be entitled to the entire property of the deceased sister.
3. If two or more sisters and no brother, they will get two thirds.
4. If brothers and sisters both are there, the share of a brother shall be equal to that of two sisters.

If the deceased has only daughters, their predetermined shares (half if only one, and for more than one two thirds for them and the rest shall go to the brothers and sister (according to the predetermined principle of one man's share equal to that of two women). If there are only sisters with the daughters, after apportioning the daughters' shares, the rest shall go to sisters.

These are the broad principles of inheritance that Qur'an enunciates. One can find their details in compilations of Hadith and Fiqh. We are not going to discuss them here.

The Basis of Inheritance

The Ancestral and Conjugal Relationships are Basic

Now, we shall try to briefly explain the bases on which the Islamic Law of inheritance rests, which will bring out some aspects of their underlying wisdom. Distribution of inheritance is among the members of the family. Blood relationship and those through *nikah* are the basis of consideration in the apportioning.[1] The family is a definite unit, kept intact by heritage and blood ties. The natural feelings of love, sympathy and cooperation exist among them. They are practically partners in all matters involving benefit and detriment of the family, help in promoting their interests and their aid in solving knotty problems. That is why the family, help in promoting their interests and their aid in solving knotty problems. That is why the family attachments of a person are very firm and strong. He or she keeps its well-being uppermost in all the benefits accruing to him or her individually. His economic effort, largely too, is for the family. Therefore, normally he regards the family as partner in his substance and its rightful shareholder. Usually, husband and wife are not blood

1. Wala' or patronage is also a basis of inheritance. A report from the Prophet s.a.w. says that patronage is for the person, emancipating a slave, meaning that the person who sets a slave at liberty, if the the slave has no inheritors the emancipating master, his former patron, shall also be his or her inheritor (Bukhari, Kitab-ul-buyu'. Babu-sh-shara' wal bai' maa'n-nisa', Muslim Kitabul-'ita'q bab annal-wal'a le-man-'ataqa.

relations of each other. However, they are so close that they become part of the unit of family. Hence, one cannot negate their right in the inheritance.

The Relatives that Can Never be Deprived

The members of the family directly related to the deceased must and do get their share in his/her property, never deprived of it under any circumstances, be they men or women. The following come under this category:

(a) The children of the deceased, both boys and girls

(b) The parents of the deceased

(c) Either of the spouses who survives

Among them, As'habul-Fara'iz shall receive their due shares. The remaining portion shall go to 'Usbah.[1]

The reason behind preference of these members over others is evident enough. A person, psychologically, regards them closer to himself and practically too they are closest to him. All his life, directly and indirectly it is they, he has to and does deal with. In spending on them, his hard-earned wealth, he feels a pleasure and mental peace. It is his earnest desire that even after his passing away they should inherit his property and none other than they should take possession of it. It is a natural sentiment, which no one can declare wrong or misplaced. Moreover, Qur'an provides it legal sanction.

1. As'habul Fara'iz are those whose shares have been apportioned by the Islamic Shari'ah. After paying their shares the remainder of inheritance is the share of relatives called 'Usbah in the terminology of the Islamic Law of inheritance. For example, if the deceased has a wife, parents and a boy and a girl, the parents and wife are as'habul-fara'iz, their shares being specified. The remainder will go to the boy and the girl, and therefore they are called U`sbah. If there had been only the daughter and no son, she would also have been included in the first category, since in that situation her share, half of the total property, is also specified, in that case father shall become 'Usbah since he in addition to his fixed share, one sixth, shall also be the recipient of the remainder

The Right of Children has Utmost Priority

Even among these most closely related family members, Islam gives precedence to the right of offspring over those of parents. This is in view of their needs and financial demands. The children are the rightful successors of their parents. After their passing away, they shoulder many of their responsibilities and promote many of the projects left unfinished by them. In addition, there are many other responsibilities of their own, which grapple them and they have to find means to meet them, planning their future in the light of the existing conditions. It is evident that their need for wealth is significantly greater than that of the parents of the deceased. In addition, the parents (grandparents of the children) themselves are inclined to help the children (their grandchildren) in every possible manner in preference to others. However, if there is no offspring the parents gain importance and their rights have priority.

Difference between Man and Woman - Where and Why?

If the man and woman stand on an equal footing in the matter of relationship to the deceased, one man's share shall be equal to that of two women, like son and daughter, brother and sister. It does not at all reflect in any way on the inferiority of woman and superiority of man. Had there been any such concept, woman's share would have been permanently minimum or none at all and she would have stood totally deprived of any share in the inheritance, whereas in fact none of these things is true. The reason behind it is that Islam has associated inheritance with financial responsibilities. According to Islamic law, man has to shoulder all the financial responsibilities, whereas there is complete exemption for a woman from them. To illustrate let us take an example of a young man and a young girl. The boy (young man) spends on the support of his parents, both or the surviving one. There is a likelihood of his extending help to his poor brothers and sisters and some other relatives in need of help.

Thus, whatever he earns drains through these channels: As compared to him, the girl (woman), if well off, may be spending on herself at the most, since she does not own anyone else's responsibility. Moreover, after marriage the expenditure on self too ends, the husband taking over her maintenance. The fact is that if the responsibilities of both are kept in view, neither the boy gets more (than necessary), nor the girl is given less than her need. There is a just balance maintained between them.

Similarly, the share of the wife is half that of the husband. Here too the woman is free from liabilities. Moreover, she gets mahar from the husband, all the ornaments, and other gifts she receives on marriage and other occasions add to her property. In the event of one spouse's death, the other gets his or her share of inheritance. If after the wife's death the husband wants to remarry, he will have to pay the second wife her mahar and take over the responsibility of her maintenance. However, if the widowed wife intends to remarry she will get her mahar from the second husband and he will have to maintain her also. Thus, would it not be just and proper that the woman should get in the inheritance half of what the husband gets? Moreover, would it not be gross injustice to the man that his share be kept equal to that of the woman? Ibn Katheer records the same in the following words:

جعل للذكر مثل حظ الأنثيين و ذلك لاحتياج الرجل الى مؤنة النفقة والكلفة و معاناة التجارة والتكسب و تحمل المشاق فناسب ان يعطى ضعفى ما تاخذه الانثى

(تفسیرابن کثیر:۱/۴۵۷)

"Allah, the exalted, has fixed the share of man as equal to that of two women because he has to bear the burden of maintenance of the woman, the difficulties of trade and earning his livelihood and other hardships of this type; it is therefore in the fitness of things that he should get twice that of woman." (Tafseer Ibn Katheer:1/457)

Allamah Rasheed Raza Misri says:

والحكمة فی جعل حظ الذكر كحظ الانثيين هی ان الذكر يحتاج الی الانفاق علی نفسه و علی زوجه فكان له سهمان و اما الانثی فهی تنفق علی نفسها فان تزوجت كانت نفقتها علی زوجها و بهذا الاعتبار يكون نصيب الانثی من الارث اكثر من نصيب الذكر فی بعض الحالات بالنسبة الی نفقاتهما

(تفسیر المنار: ۴/۴۰۶)

"The underlying wisdom in allowing man a share equal to that of two women is that he has to spend on his own support as well as on the maintenance of his wife and so two shares for him. The woman spends her substance on herself and after her marriage; her maintenance too has to be borne by her husband. For consideration of the burden of maintenance under certain conditions the share of woman becomes greater than that of man."[1]

This way, Islam reduces the burden of a woman in the matter of financial responsibilities, and in some cases of inheritance, it has reduced her share to half of that of man. Under the circumstances neither can a man complain that he has been overburdened with responsibilities, nor can woman question why her share has been reduced to half. As against this if they had been placed on an equal footing in their shares in inheritance, man would have been justified in making a demand that a woman should also be involved in financial responsibilities. This division of rights and obligations is exactly in keeping with the natures of both of them. A better division is unimaginable.

Hafiz Ibn Qayyim points to yet another aspect along with the financial responsibilities of man, which is, since a man compared

1. Tafseer-ul-Manar : 4/406. In this statement the point that under certain conditions of responsibilities of maintenance the share of woman becomes greater than that of man, is not correct. It is due to her closeness to the deceased in relationship. Details are given in the following pages.

to a woman benefits a person materially much more during his lifetime, after his death, man's share should be more than woman's share in his inheritance. He says:

واما الميراث فحكمة التفصيل فيه ظاهرة فان الذكر احوج الى المال من الانثى لان الرجال قوامون على النساء والذكر انفع للميت فى حياته من الانثى و قد اشار سبحانه تعالىٰ الى ذالک بعد ان فرض الفرائض و تفاوت بين مقاديرها ابائكم و ابنائكم لا تدرون ايهم اقرب لكم نفعا و اذا كان الذكر انفع من الانثى و احوج كان احق بالتفصيل (اعلام الموقعين:۲/۱۱۳)

"Man receiving greater share in the inheritance is manifest enough. He stands in greater need of substance than woman does since he is the supervisor in the family (he has to shoulder the responsibilities of woman's maintenance). Moreover, man is benefited much more from man in his lifetime. Allah, after specifying the rights in inheritance and keeping them at different levels, and pointing to this fact has said: you don't know which of the two, your parents or your children are more beneficial to you. When during the life-time of the deceased he had been benefited by man more than by the woman, and he also stands in greater need of money, he deserves precedence in his share from inheritance." (A'lam-ul-Muwaqqi'een : 2/113)

Why No difference between them Under Certain Conditions

Where the financial responsibilities of man reduce, Islam does not discriminate between the sexes. In case the deceased has children, the shares of both mother and father are the same. One very evident reason is that the right of the progeny has precedence. The second reason is that the financial responsibilities of a person, whose progeny has come to have progeny of its own, minimizes. He, at this stage, comes to take the position of the patron of his grandsons and granddaughters. However, if the

deceased has no children who have priority in his property, the father in that case having children (brothers and sisters of the deceased) will have greater right to inheritance than the mother of the deceased since his responsibilities too can be greater.

Closer to the Deceased, Greater the Right

Islam has based the division of inheritance on the principle that among the blood relations the closer one is to the deceased, the greater is his preference over others.[1] Those far removed shall be entitled to it only in case close relations are absent or after their having received their shares, there is still some property left. Under this principle, the entitlement to share of a woman closer to the deceased is greater than that of distant male relatives. Suppose the deceased has a daughter and a brother, there will be equal distribution of the property between them. If the deceased has only one daughter and two brothers, the daughter shall have half and the remaining half will go to the two brothers. If there are two or more than two daughters, two thirds shall go to them and one or more brothers shall get only one third.

These detailed discussions refute outright the objection that Islam does not met out justice to the woman in the distribution of inheritance. Neither there has been any partiality or biased treatment in dealing with man, nor has the woman been let down in the form of iniquitous treatment. Islam on the one hand has attached importance to woman's close relationship with the deceased and on the other, has kept in view the financial responsibilities of man. On these bases the woman is the recipient of greater share in the inheritance in certain situations and not so great in others. Moreover, in certain other situations they stand on the same plane. This is unparalleled equilibrium maintained

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If a male relative is closer to the deceased, the distant relations shall be deprived of their shares in the inheritance. Based on this principle, in the presence of children, the grandchildren have no share. Or if the father is living the brothers and sisters of the deceased (father's children) shall not be entitled to any thing from the inheritance

Chapter 13

Qisas and Woman

Qisas or the law of equal recompense pertains to life as well as injuries and wounds. Qisas for life is that if someone murders an innocent person, the murderer shall forfeit his life and in return for that murder. Qisas for wounds and other injuries is that if somebody inflicts a wound on some one or injures some organ of his body, the injured or wounded person shall have the right to avenge accordingly. This law of Qisas desires protection to the life and limb of man. The question arises whether the law is applicable to man and woman alike or there is some discrimination between them in this context. The question has raged in our Fiqh since long. Moreover, lately with the voices raised in support of the rights of woman, it has once again surfaced to engage our attention. Here we shall try to present only the needful details of the problem, and bring forward solutions most acceptable to and preferred by the generality of the jurists.

Man to be Killed for Woman's Murder

The Qur'an ordains Qisas in following words:

يٰٓاَيُّهَا الَّذِيْنَ اٰمَنُوْا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِى الْقَتْلٰى (البقرہ:۱۷۸)

"O ye, who believe! The law of equality is prescribed to you in cases of murder;" *- Al Qur'an II: 178*

It states the underlying wisdom, thus:

وَلَكُمْ فِى الْقِصَاصِ حَيٰوةٌ يّٰاُولِى الْاَلْبَابِ لَعَلَّكُمْ تَتَّقُوْنَ○

(البقرہ:۱۷۹)

"In the law of Equality there is (saving) life to ye men of understanding." *-Al Qur'an II: 179*

With reference to the Torah (Exodus 21: 23) it says:

وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ (المائدہ:۴۵)

In Torah, we ordained therein for them "Life for life."
-Al Qur'an V: 45

Under this law if a man murders a woman, the man shall pay for it with his life. Likewise, if a woman murders a man, a woman shall receive death penalty for her crime. The ahadith support it. The following report from the Prophet s.a.w. explicitly puts it as:

الرجل يقتل بالمرأة اذا قتلها (بیہقی، السنن الکبریٰ:۸/۲۸)

"If a man were to murder a woman, he shall be killed for his crime."[1]

Other reports further corroborate it. For example, a report of Sihah-Sitta says that a Jew, to in order to snatch her jewellery, crushed the head of an Ansari girl and threw her in a ditch in the ground. In her last moments, people brought her to the Prophet s.a.w. When the probable murderers were named she denied by just shaking her head. However, listening to the name of that particular Jew, she confirmed it by a nod (of assent). When people questioned the accused Jew about it, after some resistance he broke down and confessed his guilt. Therefore, he too was stoned to death in Qisas (equal for equal). (Bukhari, Kitab-ud-Diyat, bab Swalul-Qatil hatta yuqara, Muslim Kitab-ul Qisamah, bab Thubut-ul Qisas fil qatl. Abu Da'ood, Kitabud-Diyat, bab Yuqad minal Qatil, Tirmizi, Abwabud-Diyat, bab maja'a fi man razakha rasahu Be sakhratin, Nisai Kitabul Qasamah, Babul Qud minar rajuli lil mirat)

Imam Navavi says that one can infer a number of important issues from this report:

منها قتل الرجل بالمرأة و هو اجماع من يعتد به۔
(شرح مسلم:۲/۵۸)

1. Baihaqi: As-Sunan-ul Kubra: 8/28. This tradition has been reported in these words also: Surely men shall be killed in lieu of women. The authority of this report has been questioned, yet it has been generally accepted. For details see Al-Talkhees-ul Habeer: 2/336-337

"One of them is that man shall be put to death in return for the murder of a woman. There is consensus on this issue of all those that count."[1]

Abu Da'ood quotes a lengthy report, which records:

ان عقل المـرأة بين عصبتهـا من كانـوا لا يرثـون منهـا شيئا الا ما فضل عن ورثتها فان قتلت فعقلها بين ورثتها وهم يقتلون قاتلهم۔ (ابوداؤد، کتاب الدیات، باب دیات الاعضاء)

"The blood money of murder by a woman shall fall due to her 'usbah. Usbah are those relations who after disbursing the dues rights of ashabul faruz inherit the rest of her property, (e.g. son, grandsons, brothers, etc.). However, in case she is murdered, all of them will receive an appropriate share of her blood money. And if they (decide on Qisas) the court shall permit them to take the life of her murderer."

(Abu Da'ood kitab-ud-diyat, bab diyatil-a'aza)

Here in the text of the report 'they can take the life of their murderer' means the murderer of their kinswoman. Nisa'i and Ibn Majah have reported it with the words 'her murderer.' (Nisai, Kitabul Qisamah, bab kam diyat shubeha Ahmad, Ibn Majah, Abwab-ud-diyat, Bab Aqlul mir' ata 'ala usbataha) That makes it amply manifest that a man receives death penalty for murdering a woman. Describing a woman's murderer as the murderer of her relatives indicates the legal position that he is not only the murderer of the woman rather that of all her inheritors. They would be in their rights legally to have him put to death for his crime or accept blood money in lieu of it or even consent to forgive him.

1. Sharah-e-Muslim: 2/58.

Imam Shaukani says that this report shows that any non-Muslim murdering a Muslim woman shall be put to death for his crime. But the doubt remains whether this ordainment will abide in case of a Muslim murderer, since the Shari'ah has made a distinction between the Qisas of a Muslim and a non- Muslim. A Muslim cannot lose his life for the murder of a non-Muslim. Nail-ul-Autar: 7/162. But the distinction on whose basis Imam Shaukani has expressed his doubt is not based on consensus. According to the Hanafite school a Mulsim murdering a Zimmi (convenanted non-Muslim living in a Muslim state), shall be put to death for his crime. Hidayah:4/559

The great stalwart among the Tabi'een, Sa'eed bin Musayyib says:

الرجل يقتل بالمرأة اذا قتلها (بیہقی،السنن الکبریٰ:۸/۲۸)

"Man shall be put to death for the woman, if he is found guilty of her murder." (Baihaqi, As-Sunan-ul-Kubra : 8/28)

Imam Bukhari says:

قال اهل العلم يقتل الرجل بالمرأة

(بخاری، کتاب الدیات، باب القصاص بین الرجال والنساء)

"The learned men have said that the man shall be put to death for the murder of a woman."
(Bukhari, Kitabud-Diyat, babul Qisase bain-ar-rajule-wan-Nisae)

This is the opinion of the four most outstanding imams of jurisprudence from the point of view of their following - Imam Abu Haneefah, Imam Malik, Imam Shafi'i, Imam Ahmad r.a. and other great scholars of the Muslim *Ummah*.

(Ibn Qudamah: Almughni: 7/679)

Allamah Ibn Abdul Bar says that there is consensus on it that man shall pay qisas for woman, and woman for man. Among the companions Àli r.a.a. and among the tabi'een Hasan Basri r.a. opine that if man murders a woman and her inheritors want him to be put to death they can do so after payment of half the blood money (since a woman's blood money is half that of man.) If they do not pay half the blood money, they will get the blood money of the woman. However, this does not stand confirmed from Àli r.a.a. In fact, this is the opinion of 'Uthman-al-Labatti, a jurist of Basrah. (Fathul-bari : 12/160. See also Tafseer Kabeer : 2/108) We are also told that Hasan Basri and Àta r.a. are also of the opinion held by the majority. (Ibn Qudamah, Almughni: 7/679)

That the blood money of woman is half that of man is no strong argument, and therefore, man will be liable to Qisas only after paying half the blood money to him, as the punishment for Qazaf or slander is the same for both. The woman alleging a man with involvement in fornication shall be liable to the same

punishment as when a man alleges a woman of the same. No amount is due as return to a man before being put to death. There is no discrimination made between the murderer and the murdered because of their positions. That is why an entire group of men joining hands in the murder of an individual, shall receive death penalty for their participation in the crime. (Al Mughni : 7/679)

Imam Shaukani says that the purpose and underlying wisdom of Qisas also supports the opinion of the majority of the jurists. The wisdom behind Qisas is to prevent shedding human blood and to ensure that oppression and excesses do not torment him. If the man does not receive death penalty as Qisas for the murder of a woman, thus she may lose her life for several reasons. One reason is to deprive her of her share in inheritance. The person who does not want to give her anything from inheritance may very likely murder her and thus get her out of the way. The other reason may be the sense of shame and degradation carried over from the days of Jahiliyah, which prompted him to murder a daughter, particularly when there is a minor slip on her part. During the period of Jahiliyah, people buried alive their female offspring for this reason alone - shame and disgrace. The third very strong reason is her frailty. The intending murderer does not expect the same resistance from her as from man. Therefore, any exemption or relaxation in the application of Qisas will enhance oppression and tyranny against her and her life shall become easily vulnerable to a violent end. (Nail-ul-Autar : 7/164)

Qisas of Woman's Life from a Woman

These details reveal that there is near consensus of the ummah or at least the four well-known imams of Fiqh and the majority of the jurists are unanimous on the issue that a woman shall receive death penalty for taking the life of a man, as a man will pay Qisas for murdering a woman. Another question that remains is whether the punishment be same even if the murderer and the murdered are both women. The answer to this query is

clear enough. When a man can receive death penalty for the murder of a woman, why can a woman not receive the same for murdering of a woman? The Quran is explicit about it:

وَالْاُنْثٰى بِالْاُنْثٰى (البقرہ:۱۷۸)

"And woman shall be put to death for woman."
-Qur'an II: 178

Therefore, there is no contention among the jurists on a female murderer receiving death penalty for taking the life of another woman. The words of the Qur'an are general, and the Hanafite Fiqh too reasons on its basis that a free woman murdering a slave woman shall also pay for it with her life.

(Raddul-Muhtar 'alad-Durril-Mukhtar : 5/471)

Qisas for Injuries to a Woman

Let us now take up the punishment for the physical injuries to a woman. It also takes the same forms discussed earlier under loss of life:

1. Woman shall pay for her crime against man.
2. Man shall get death penalty for murdering a woman.
3. Woman shall be liable to punishment for any crime against a woman.

The following Qur'anic verse has ordained Qisas:

وَكَتَبْنَا عَلَيْهِمْ فِيْهَا اَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالْاَنْفَ بِالْاَنْفِ وَالْاُذُنَ بِالْاُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوْحَ قِصَاصٌ ۚ فَمَنْ تَصَدَّقَ بِهٖ فَهُوَ كَفَّارَةٌ لَّهٗ وَمَنْ لَّمْ يَحْكُمْ بِمَا اَنْزَلَ اللّٰهُ فَاُولٰٓئِكَ هُمُ الظّٰلِمُوْنَ ○ (المائدۃ:۴۵)

"We ordained therein for them "Life for Life, eye for eye, nose for nose, ear for ear, tooth for tooth, and wounds equal for equal." But if any one remits the retaliation by way of charity, it is an act of atonement for himself. And

if any fail to judge by what Allah hath revealed, they are wrong-doers." - Al Qur'an V: 45

When proved guilty of murder, the court shall sentence both men and women to death without gender discrimination. Is Qisas applicable in the same manner if they inflict injury or loss on one another, or is there some discrimination?

Àbdullah Ibn Abbas r.a.a. says that the Arabs did not inflict capital punishment on man as a Qisas for murdering a woman. They punished a woman for a crime against another woman and a man for man. The verse above points out that Muslim man and woman, if free (not bonded), are peers or equal in status. One taking the life of another intentionally or causing a damage of a lesser degree (than murder), shall have to pay for it based on equality. (He further goes on to say that the same principle will apply to male and female slaves. Ibn Jareer : 2/60. Since slaves are not under discussion here, we shall, Allah willing, take it up on some other occasion)

Imam Navavi says that the majority among the companions, tabi'een and latter day 'ulama reasoned from the verse that the ordainment of Qisas shall be enforced among men and women also, and murderers of each other shall pay with their lives, and physical injuries shall be avenged accordingly in a just measure. (Sharah-e-Muslim : 2/59) For example, if a man fractures the hand of a woman, or vice versa, it demands fracturing the hand of the culprit, likewise. However, in the case of an injury in which avenging based on equality is not possible, there is permission for its compensation.

Anas r.a.a. reports that his paternal aunt, Rubayyi' broke a tooth of an Ansari girl. Rubayyi's people desired that the victim's people should either forgive her or accept compensation. However, the family of the Ansari girl appeared bent on avenging. When people presented their case to Prophet s.a.w., he ordered Qisas (tooth for tooth). The uncle of Anas, brother of Rubayyi' said, "O Messenger of Allah! By Allah Rubayyi's tooth shall not

be broken." (Now he spoke like this not with the intention of opposing or rejecting the decision of the Prophet but owing to his faith in Allah's Mercy and confidence in himself that he would ultimately prevail upon the parents of the complainant to remit retaliation or accept diyat (compensation). The Messenger of Allah s.a.w. said to Anas that the Book of Allah ordains equal for equal, and so we would enforce Qisas. A little later, the party insisting on Qisas relented to accept diyat instead. Seeing this change in their attitude, the Apostle of Allah remarked that there are certain slaves of Allah whose oath Allah fulfils.

(Bukhari, Kitab-us-Sulh, Babus-Sulh fi diyat, Kitab-ut-Tafseer (II : 178) and (V : 45) Abu Da'ood, Kitabud-Diyat babul-Qisas fis-Sinn)

This is a report carried by Bukhari and others, which goes to prove that a woman injuring another must pay in the form of Qisas. The report by Muslim tells us that sister of Rubayyi', Umme-Harithah wounded a person. When people brought the case to the notice of the Prophet s.a.w., he said, "She will have to pay for the injuries." At this Rubayyi's mother intervened saying, "Shall umme-e-Harithah be subjected to retaliation? By Allah! It will never come to pass." The Prophet said to her, "Glory to Allah! What manner of talk is that! The Book of Allah has ordained Qisas." However, the people of the wounded person later accepted *diyat*. The Apostle of Allah on this situation remarked that, there were slaves of Allah who, when they swear in the name of Allah, are not let down.[1]

1. (Muslim, Kitab-ul-Qisamah, bab Ithbat-ul-Qisas fil-asnan. Imam Bukhari has quoted this report in the translation of the bab. In Kitab-ud-diyat, bab-ul-Qisas, bainar-rajul wan-nisa'. On the basis of the difference in the details of both the reports. Imam Baihaqi says that this is not one but two different incidents. But Ibn Turkmani has refused to accept this opinion of two incidents.

(As-Sunan-ul-Kubra ma' Jauhar-un-Naqi : 8/39-64.) Allamah Ibn-e-Hazm is of the opinion that these events relate to one woman. In one she wounded a person and Allah's Apostle s.a.w. announced Qisas for it, and in another she broke the tooth of another victim, and Qisas was decided by the Prophet. In the first event it was her mother who vowed by Allah and in another her brother. Fathul-Bari : 12/173,174. But these details do not harmonise perfectly with the reports. Imam Navavi too has gone in favour of declaring them two different incidents. Sharah-e-Muslim : 2/59)

Imam Navavi records:

منها اثبات القصاص بين الرجل والمرأة (شرح مسلم:۲/۵۹)

"the report reveals several points. One of them that is proved by it is that there will certainly be Qisas or retaliatory punishment between man and woman if occasion arises for it." (Sharah-e-Muslim : 2/59)

We now present some of the sayings of the Prophet's (s.a.w.) companions r.a.a. and Tabi'een r.a., which prove that a woman must pay for her crime against man and vice versa.

Imam Bukhari reports that 'Umar r.a.a. said:

تقاد المرأة من الرجل فى كل عمد يبلغ نفسه فما دونها من الجراح (بخاری، کتاب الدیات، باب القصاص بین الرجال والنساء)

"If a woman murders a man intentionally or hurts him to a lesser degree, she will be called to pay it with her life or retaliatory punishment at par."

(Bukhari, Kitabud-diyat, babul-Qisas, bainar-rajul wan-nisaa')

When woman has to pay for her crime, man is all the more liable to such a penal action. Thus, we find 'Umar r.a.a. saying on another occasion:

جرح الرجال والنساء سواء (فتح الباری:۱۲/۱۷۳)

"The wounds of man and woman hurt equally."

(Fathul Bari : 2/173)

'Umar bin Abdul Aziz r.a. says:

القصاص فى ما بين المرأة و الرجل حتّى فى النفس (حوالہ سابق)

"The enforcement of ordainment for Qisas shall be between women and men, even in the matter of life."(Ibid)

Abu Zanad says about seven well-known jurists of the period of Tabi'een[1] and such other 'Ulama and jurists:

1. The seven well-known jurists referred to here are : Sa'eed bin Musayyib, 'Urwah bin Zubair, Qasim bin Muhammad, Abu Bakr bin Abdur-Rahman, Kharijah bin Zaid bin Thabit, 'Ubaidullah bin 'Abdullah and Sulaiman bin Yasar r.a.

انهم كانوا يقولون المرأة تقاد من الرجل عينا بعين و اذنا باذن وكل شيء من الجراح علٰى ذالک و ان قتلها قتل بها

(السنن الکبریٰ:۸/۴۰)

"Women will have to pay for the crimes against man, eye for eye, ear for ear and various types of wounds equal for equal. (In a similar manner man will have to pay for his crimes against woman) and if man murders her he will be put to death."

(As-Sunan-ul Kubra : 8/40)

Imam Malik reasons from the verse above and records:

القصاص يكون بين النساء كما يكون بين الرجال والقصاص ايضا يكون بين الرجال والنساء (موطاامام مالک،کتاب العقول:القصاص فی القتل)

"The ordainment of Qisas is applies to cases between women like those between men. Likewise, it is also binding to cases between men and women.

(Mu'atta, Imam Malik, Kitabul Uqul, Al Qisas fil Qatl)

Allamah Ibn Qudamah Hanbali says that people for whom Qisas is applicable in the matter of life, it is also equally applicable to lesser damage and physical injuries. The opinion of Imam Malik, Imam Thauri, Imam Shafi'i, Is'haq bin Rahuwaih, Abu Thaur and Imam Ahmad is also same. (Al-Mughni : 7/679-680) Under this principle since for the life of man, woman receives death penalty and for the life of woman, man receives death penalty, so if they cause injury to each other, they will pay for it on the principle of equality.

The Hanafite School of jurisprudence permit retaliatory capital punishment for the lives of men and women in case of wilful murder, but it ceases in case of lesser damage, injuries, or hurts. For example, a man murdering a woman or vice versa shall receive death penalty for their crimes. However, if a man smites the hand of a woman or the other way round, the punishment in Hanafite jurisprudence is not like for like, but *diyat* (penal compensation). Murder causes of loss of life to the man as well as to the woman. Loss of life being common between them, it

justifies the retaliatory action or *Qisas*. However, the case of body organs is different. They are in the nature of property. People use both property and organs for protection of life. Therefore, there is permission for *Qisas* relating to them only when their value is the same. The *Shari'ah* has evaluated women's organs a little lower than those of man. (We shall take it up later). When there is a difference in their value, there shall be no *Qisas* or retaliatory action for one against the other.

The ordainment of *Qisas* in Surah Ma'idah (Q. V: 45) is not absolute. There is general acceptance on all hands that there is no qisas for a Harbi and Musta'min. (A citizen of a country at war with the Islamic state is Harbi and one temporarily offered refuge is Musta'min). When there is exemption for them on the authority of the above verse, one can grant immunity on the authority of the *Hadith*.

If one says that hands of men differ in length, they differ in applying energy and power of grip as well; still there is no discrimination in applying the ordainment of Qisas. Measured by this yardstick, there should be no distinction between man and woman on the difference of size of their hands etc. The argument offered against this reasoning is that since Islam recognizes difference between the diyat of man and woman, one must consider it. However, the one cannot consider the difference between the hands of one man and another since there is no rule for it. So for all practical purposes one must consider them equal.

(Hidayah : 4/566. For greater details see Kifayah : 5/1267)

One of the objections is that if equality of *diyat* between man and woman is not a basis of comparison in the matter of *Qisas* of limbs and organs, it would not be wrong to punish a woman as a retaliatory measure for crime committed against a man, since *diyat* of man's organs is greater than that of woman's. Why can court not impose *Qisas* for something more valuable on an object of comparatively lesser value? For example, if a woman smites the hand of a man, it would be right to cut her hand off since diyat of

man's hand is greater than that of a woman. Hanafite Fiqh, however, does not regard it as justifiable.

(Al Mughni, Ibn Qudamah : 7/680)

This is also the well-known opinion and usage of the Hanafite fiqh. However, another opinion from the same school permits it and says that if a woman smites the hand of a man, her hand too can be cut off as a measure of equal for equal. (Durrul Mukhtar: 5/488) If this opinion is accepted, the objection vanishes.

Concerning the wounds of head and face[1], there is an opinion in Hanafite Fiqh that one cannot apply *Qisas* equally to man and woman in such cases, because *Qisas* requires equality in value and utility, and it does not factually exist between man and woman. However, there is another opinion also in this regard, which permits *Qisas* between man and woman since there is some difference between the *Qisas* of limbs and organs and the *Qisas* for wounds. Cutting off limbs and organs ends their utility and the defect abides. However, wounds inflicted on the face, though causing deformity and defect, do not affect utility. On this, man and woman are at the same footing.

(Raddul-Muhtar alad-Durril-Mukhtar : 5/488)

The wounds of the face are not alone in causing disfigurement. The loss of limbs and other organs also causes deformity and defects. When based on disfigurement due to facial wounds Qisas is justified, the damage to limbs and other organs too deserves the same consideration and treatment. Apart from the point of utility, if one considers the aspect of defect, the opinion of Hanafite Fiqh necessitates further thought and discussion. In this matter, the opinions of other Imams of the well-known and recognized schools of Fiqh and those of the majority of jurists appear to be stronger - that in the Qisas for organs and limbs, there is no distinction between man and woman.

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1. These wounds are called 'Shujaj'. For details of their varieties and rules, which variety demands Qisas and which variety, diyat, see Hidaya:4/586-588

Chapter 14

Diyat (Blood Money) of Woman

'Diyat' is the monetary compensation imposed by Shari'ah for wilful murder or for lesser harm in the form of physical damage. One of the objections raised against the Law of Diyat in Islam is also this that here too as in other fields of activity, it has failed to maintain equality between the sexes. The objection, however, does not hold water.

Differences of Opinion among the Jurists

This is a juristic discussion and individuals and schools of thought differ in their opinions. Below we are going to furnish some details and an analysis of the issue under discussion.

Diyat of Woman is half of Man's

According to the Hanafite Fiqh, diyat of woman is half that of a man, whether for loss of life or damage to limbs or organs.

(Hidayah : 4/586)

This is also the opinion of Imam Shafi'i, Sufyan Thauri, Imam Laith and Abu Thaur.(Bidayatul-Mujtahid : 2/463, Almughni : 7/797) The argument brought forward in support of it is that according to Mu'az bin Jabal r.a.a. the Prophet s.a.w. said:

دية المرأة على النصف من دية الرجل (بیہقی، السنن الکبریٰ: ۸/۹۵)

"The diyat of woman is half of man's."

(Baihaqi; As-Sunanul-Kubra : 8/95)

This report does not base on strong authority.

(Baihaqi; As-Sunanul-Kubra : 8/96)

However, 'Ali r.a.a. records:

جراحات النساء على النصف من دية الرجل فى ما قل و كثر

(حوالۂ سابق)

"The Diyat for the injuries caused to a woman is half of that given to a man, for his injuries irrespective of the extent of her injuries." (Ibid)

Ibrahim Nakha'i reports from 'Umar and 'Ali r.a.a. both:

عقل المرأة على النصف من دية الرجل فى النفس وما دونها

(حوالہ سابق)

"The diyat of a woman is half of that given to a man whether it pertains to loss of life or a physical damage of lesser degree." (Baihaqi : As-Sunanul-Kubra. Baihaqi says that this report is munqata' (with a broken link) but it aids and supports the previous report. A different report from 'Umar has also come down to us. Baihaqi : 8/97)

And this opinion is also said to be that of 'Abdullah Ibn 'Umar and Abdullah Ibn Abbas r.a.a. Hafiz Ibn Hajar, however, informs us that he failed to find this opinion of these two companions. (For details see Al-Talkheesul-Habeer : 2/339)

The question arises, why should woman's diyat be half of man's? The answer offered is that since man is the breadwinner of the family and bears the financial burden; his death causes greater loss to his family than a woman's death. Therefore, his diyat is twice that of a woman. Allamah Rasheed Raza Misri says:

والاصل فى ذالک ان المنفعة التى تفوت اهل الرجل بفقده اكبر من المنفعة التى تفوت بفقد الانثىٰ فقدرت بحسب الارث (تفسیر المنار: ۵/۳۳۳)

"The basic consideration in this matter is that owing to man's death the family is deprived of greater benefits than it would be through the death of a woman. Hence, like the man's share in the inheritance is twice that of a woman, his diyat too has been kept twice that of a woman."

(Tafseerul-Manar : 5/333)

There is another argument in its support. According to the Islamic Law, it is a man who can hold positions of religious authority like Imamat (leadership) of prayer and Hajj, as also heading the Islamic state and positions for the collective responsibilities like military services and guarding the frontiers. In purely mundane affairs too, the industries and professions essential for the survival of man, he has a much larger share. Thus, man's loss of life extends further damage to the society in addition to his own family, in a much bigger way than that caused by a woman's loss of life. It is but natural to fix his diyat as double that of a woman. (See A 'Alamul-Muwaqqi'een : 2/112)

Undoubtedly, these arguments carry weight. However, the ordainments of the *Shari'ah* do not stand on reasoning alone. Strong and convincing arguments of the Qur'an and the *Sunnah* need confirm an issue. The reports from the Prophet s.a.w. and sayings of the companions presented in support of this issue, as stated earlier, are not very authentic.

Beyond One-Third amount, Woman's Diyat Becomes Half of man's

According to Imam Malik and Imam Ahmad and others, there is no difference between the diyat of a man and a woman up to one third. However, after one third, woman's diyat becomes half of that of man. (Al Mughni : 7/797-798) It finds support in the report by 'Abdullah Ibn 'Amr bin-al-'As. He reports the Prophet s.a.w. to have said:

عقل المـرأة مثل عقل الرجـل حتى يبلغ الثلث من ديتها

(نسائی، ابواب القسامہ، عقل المرأۃ۔ دار قطنی کتاب الحدود والدیات ص ۳۲۶، ۳۲۷)

"Woman's diyat is equal to that of man until it (her diyat) becomes one third." (Nisai, Abwabul-Qisamah, 'Aqlul marate, Dar Qutni, Kitabul Hudood Wad-diyat: 326-327)

This report too is weak in the matter of authenticity.

(See Baihaqi : 8/96. At-Ta'leequl-Mughni, p. 327. Allamah Zurqani says : Its authority is weak. Sharah-uz-Zurqani 'alal Mu'atta : 4/34)

In support of this maslak (way or code of conduct) the

following words of Zaid bin Thabit r.a.a. are put forth. He says:

جراحات الرجال والنساء سواء الى الثلث فما زاد فعلى النصف (بيهقي:٨/٩٦)

"The diyat of man and woman is the same up to a one-third. After crossing that limit it will become half that of man." (Baihaqi : 8/96)

A more or less similar report has come down to us from 'Umar r.a.a. (Ibid)

Sa'eed bin Musayyib r.a. says that "up to the limit of one third the diyat of man and woman will be equal whether it pertains to a finger, a tooth, a wound on the body or a head injury; (beyond that, the woman's diyat becomes half of man's diyat).

Imam Malik r.a. says that Imam Zahiri r.a. and 'Urwah bin Zubair r.a.a. also hold the same view as that of Sa'eed bin Musayyib r.a. (Mu'atta Imam Malik, Kitabul-uqul Bab Aqlul-Mar'at)

It is said that this is also the opinion of the majority of the jurists of Madinah, the outstanding jurists among the Tabi'een, Saba'a Fuqaha' - the seven well-known jurists, 'Umar bin Abdul Aziz r.a., Imam Laith, and Qatadah, etc.[1]

Qazi Ibn Rushd is a Malikite. He opines on these arguments: "The first of these groups - Malik and others have reposed their confidence in merely some Mursal reports (reports which do not reach Prophet Mohammad in the chain of narrations, but end only with one of his companions). (Bedayatul-Mujtahid : 2/463)

This is the nature of their supporting authorizations. Now, let us take them up at the intellectual level. A very pertinent question arises; what is the wisdom (reason) behind the statement that up to a certain limit man and woman are made to stand at the same

1. Zurqani, Sharah-e-Mu'atta : 4/34. Ibn Qudamah has gone so far as to say as if there was consensus on it during the period of the companions. Only the isolated opinion of 'Ali r.a.a. is said to be against it. But this is not confirmed satisfactorily. Al Mughni : 7/798. All that can be said is that it is easy to talk of consensus but not so easy to prove it convincingly.

level but after one third (limit) the woman's diyat becomes half of man's diyat? The answer given to this question is that if one third also is halved it becomes very small and cannot compensate the loss incurred by the woman. Therefore, up to one third, Islam kept it on a par with man, but after that, reduced it to half the diyat of a man. (A'alamul-Muwaqqi'een : 2/112)

If the reports quoted above are accepted as in order and reliable, this answer appears reasonable enough. But another question crops up and it is this that the injuries and wounds for which the woman receives one third diyat, for much more serious injuries it gets reduced to less than one third, whereas common sense demands that proportionate to the damage caused to her, she must be allowed enhanced compensation. So we find that according to the report of Mu'atta, the following discussion on this issue took place between Rabi'ah bin 'Abdur Rahman r.a. and Sa'eed bin Musayyib r.a.:

Rabi'ah: Sir, tell me about the diyat of one finger of a woman.

Sa'eed bin Musayyib: Ten camels.

Rabi'ah : And that of two fingers?

Sa'eed bin Musayyib: Twenty camels.

Rabi'ah : And what about three?

Sa'eed bin Musayyib: Thirty camels.

Rabi'ah : What do you say about four fingers?

Sa'eed bin Musayyib: Twenty camels only (since the diyat of the life of man with his entire body is a hundred camels, the diyat of a woman exceeding one third became half, according to him.)

Rabi'ah: When the woman's pain increases and her loss is greater, will diyat in that situation get reduced?

Sa'eed bin Musayyib: Are you an Iraqi that you believe in reasoning in every thing, even where an injunction (Sunnah) comes in? Guesswork against a definite ordainment!

Rabi'ah: No. I am a student and anxious to learn about the nature of the issue.

Sa'eed bin Musayyib: My son! This is the Sunnah.[1]

Among the jurists of late Islamic era, Imam Shaukani held this opinion that after a third amount of diyat, woman's share becomes half that of man. However, he is conscious of the weight of the objection that in this way after a third, woman's diyat reduces when common sense demands that it to be more. According to him up to one third the diyat of man and woman are equal. Only in the excess after one third, it will become half. For example, where man will be entitled to forty camels, woman's diyat shall be thirty-five camels. He says that the report of 'Abdullah bin Umro bin-Al-'As, that is put forth there, is no deterrent to construe it this way. As for that of Sa'eed bin Musayyib, it is a Mursal report and hence, unacceptable. Moreover, this is not all. He writes that it is necessary to construe the Hadith as suggested above.

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1. Mu'atta Imam Malik, Kitabul-'Aqul, Bab ma ja'a fi Aqlil-Asabi'. Sa'eed bin Musayyib is a tabi'i. This report of his is 'Mursal (with a missing link) since it does not mention the name of the companion from whom he learnt that it was the Sunnah concerning diyat. Ibn 'Abdul Bar says that the 'Ulama are unanimous on the issue that the reports of Sa'eed bin Musayyib are more reliable than the Mursal reports of other people. Some have said that a more searching study has shown that the authority behind such reports of his is present. (Zurqani, Sharah-e-Mu'atta : 4/39). But the question remains in what sense has Sa'eed bin Musayyib called it Sunnah? Imam Shafi'i says that it is possible that this saying of his might have been reported from the Prophet s.a.w. himself. And that too is possible that it might have been the opinion of the generality of learned men of his period. I too held this opinion, then (later) gave it up and kept praying to Allah since so often people call same thing Sunnah but do not find its authority from the Prophet s.a.w. So the right course in this issue would be to reason it out. (And that according to Imam Shafi'i, as already stated, above is that womsn's diyat, big or small, is half that of man). As for the saying of Zaid bin Thabit, there is 'Ali's saying against it. (Both quoted above). That too has the same position as regards authority. Baihaqi, As-Sunanul-Kubra: 8/96. He goes on to say further that Imam Malik too used to call it Sunnah, so I followed him in this issue. But still I was far from satisfied. Then I learnt that by the word Sunnah he meant the Sunnah of the Madinites. So after that I changed my opinion. Al-Talkheesul Habeer: 2/340

لئلا يقتحم الانسان فى مضيق مخالف للعدل والعقل
والقياس بلا حجة نيّرة (نيل الاوطار: ۷/۲۲۶)

"So that man may not find himself lost in a narrow gorge against all that justice and equity, reason and conjecture demand." (Nail-ul-Autar : 7/226)

Some Other Considerations

There are some other differences of opinion concerning diyat. Those who hold the opinion that after the limit of a third, woman's diyat becomes half, have this contention among themselves whether one third as such forms a part of it or not. One opinion is that before reaching one-third man and woman will have equal diyat. However, as soon as it attains that value, one third, it shall become half. The other opinion is that it becomes one-third. Ibn Qudamah, a Hambalite, has preferred this opinion. He says that the words of the report "until it reaches one third" tell us that the equality of man and woman is limited to less than one third.

(Al Mughni : 7/798)

Some of these learned men do not believe in the equality of diyat of man and woman even up to one third. 'Abdullah Ibn Mas'ood r.a.a. says that in "the diyat of tooth and 'muzihah' (a wound exposing the underlying bone), man and woman will be equal, but after that woman's diyat shall become half of that of man." (As-Sunanul-Kubra, Baihaqi : 8/86)

A tradition of the Prophet s.a.w. says, "The diyat of a tooth is five camels."(Nisai, Qisamah, Aqlul-Asnan) This is also the diyat of 'muzihah', namely five camels.[1] That means up to five camels, there shall be no difference in the diyats of man and woman. After that the diyat of woman shall become half that of man. Qazi Shuraih also holds the same opinion. There is one opinion to this effect that up to 15 camels the diyat of woman shall be equal to

1. Abu Da'ood, Kitabul-Diyat, Bab diyatul A'aza, Tirmizi, Abwabul-diyat, bab maja'a fil mauzihah, Nisai, Qisamah, Almuwazih. The same diyat has been mentioned in Hanafite Fiqh. Hidayah : 4/586-587

that of man and half after that.(Qazi Shaukani says: 'There is no argument behind all these sayings. Nail-ul Autar: 7/227) Scholars of later Islamic era too hold similar opinion.

As against this, Hasan Basri r.a. says that upto half (fifty camels) man and woman shall be equal in the matter of diyat. After that woman's diyat shall be half that of man.

Allamah 'Abdur-Ra'uf Manavi, a Shafi'ite, says that upto one third the diyat of organs and limbs of woman is like that of man. However, when it becomes half, the woman's diyat shall be half that of man. (At-Taiseer bi-Sharah-il-Jamei'-Sagheer : 2/133)

Allamah Muhammad bin 'Abdul-Hadi Sindhi, who subscribes to Hanafite jurisprudence, too says exactly the same.
(Hashiyah-Al-Sindi, 'Alan-Nisai : 2/247)

In this way a majority of the jurists, though unanimous on a woman's diyat be only half that of man, differ widely in details. Every diyat of woman, big or small, shall be half that of man or half of that excess over one third of the total diyat when it becomes half? In addition, there are other contentions too besides these. The reason finds its roots in the fact that there is no definite instruction in the Qur'an to this effect. The traditions of the Prophet s.a.w. brought forward in this connection are not strong enough in authority on whose basis there could be some decisive derivation that could remove all doubts, and end contentions. The sayings of the companions and their followers (tabi'een) are not also in harmony and differ widely in details. This naturally caused greater differences among the jurists. There is room for all these opinions and one may prefer any one of them. Keeping all these contentions and discussions, there is opportunity for further thought in this matter.

An Important Opinion

We also come upon yet another opinion, that of Asam and the exegetist, Ibn-e-'Atiyah. He says that the diyat of man and

woman is the same. He reasons for it from the Qur'anic verse:

وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَّدِيَةٌ مُّسَلَّمَةٌ إِلَىٰ أَهْلِهِ (النساء:٩٢)

"And whoever kills a believer by mistake, it is ordained that he should free a believing slave and pay blood money to the deceased's family from it." - Al Qur'an IV:92

There is consensus that this Qur'anic verse addresses the murder of both man and woman, and therefore, their diyat should be the same. (Tafseer Kabeer : 3/297)

Allamah Rasheed Raza Misri says that the Qur'an has mentioned diyat absolutely without any specification of man or woman. The word used has a general sense. It demands that to whatever quantum of diyat the heirs of the murdered person agree would be in order and acceptable, no matter whether it is too low or too high in the estimate of the opposite party. However, the Sunnah has put a limit on it in accordance with the generally accepted Arab tradition. Islamic Jurists have a consensus on the diyat of a free Muslim, who is not guilty of any crime to forfeit his blood, being one hundred camels, or their value in cash and that of a woman is half (fifty camels or their market price in the form of cash). After which, he goes on to say:

ظاهر الأيـة انـه لا فرق بين الذكر والانثىٰ (تفسير المنار:٥/٣٣٢،٣٣٣)

"The Qur'anic verse makes it clear that there is no gender discrimination here between man and woman." (Tafseer-ul Manar : 5/332-333)

Undoubtedly, the well-known jurists do not adhere to the opinion that the diyat of man and woman is same. Therefore, it appears to be an isolated and rare opinion, although worthy of consideration and serious thought.

Chapter 15

Woman as Witness

One of the objections levelled against the law of evidence in Islam is that it equates the evidence of two women to that of one man. This is insulting to the woman and negation of equity to her.

There is no doubt that Islam, in many affairs, differentiates between the evidences provided by a man and a woman. However, taking it as an insult to the woman is unjustified and against the teachings of Islam. Islam has not arbitrarily made this distinction. The reasons for it relate to woman's nature, temperament, and her sphere of action. To appreciate this attitude of Islam in this particular regard one has to understand fully the Islamic point of view in some detail. Islam classifies evidence under three heads:

1. Evidence in the enforcement of hudood (penal laws) and Qisas (compensatory revenge)

To enforce a penal law on somebody or for the purpose of Qisas, evidence of two men is essential. However, in a case of fornication, four men witnesses essential to establish the allegation of illicit sex and enforce the prescribed law. Qur'an mentions the number of witnesses in a case of fornication in the following verse:

وَالّٰتِیْ یَاْتِیْنَ الْفَاحِشَـــةَ مِنْ نِّسَآئِکُمْ فَاسْتَشْهِـــدُوْا عَلَیْهِنَّ
اَرْبَعَةً مِّنْـــکُمْ ج (النساء:۱۵)

"If any of your women are guilty of lewdness, take the evidence of four reliable witnesses from amongst you against them." - Al Qur'an IV: 15

At another place, it says:

وَالَّذِيْنَ يَرْمُوْنَ الْمُحْصَنٰتِ ثُمَّ لَمْ يَاْتُوْا بِاَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوْهُمْ ثَمٰنِيْنَ جَلْدَةً (النور:۴)

"And those who launch a charge against chaste women and produce not four witnesses (to support their allegations), - flog them with eighty stripes."

- Al Qur'an XXIV: 4

In these verses اربعة منكم (four men from amongst you) and اربعة شهداء (four male witnesses) are the words showing that for the establishment of the charge of fornication evidence of four men is essential.[1]

That means that in matters relating to the divine limits (hudood) and Qisas, Islam only considers only men as reliable witnesses, and does not accept the evidence of a woman. The well-known tabi'i, Imam Zahiri, says that during the period of the Prophet s.a.w. and Abu Bakr and 'Umar r.a.a. this was the principle in practice. He says:

مضت السنة من لدن النبى صلى اللّٰه عليه وسلم و الخليفتين من بعده ان لا شهادة للنساء فى الحدود والقصاص

(ابن حجر، الدرایہ فی تخریج احادیث الہدایہ: ص ۲۹۵)

"From the time of the Prophet s.a.w. and then first two caliphs immediately following him (Shaikhain-Abu Bakr and 'Umar r.a.a.) the Sunnah or the principle in practice has been that in matters relating to the divine limits (hudood) and Qisas the evidence of women has not been acceptable.

(Ibn Hajar, Ad-Darayat fi takhrigil-Ahadith)

Islam provides divine limits (hudood) and Qisas for the protection of life, property and honour and dignity of man. For a

1. Here a question arises that when for the most heinous crime, murder, two witnesses are enough to establish proof, why was the evidence of four men considered essential for evidence of fornication? The answer is that Islam does not like that a shameful act like this be noised abroad and propagated in Muslim society. If at all, this crime is committed somewhere, it ought to be hushed up and the culprit punished only when not two but four witnesses come forward for evidence.

deliberate murder, the murderer must pay with his own life in Qisas. An unmarried person implicating himself in fornication must pay by receiving one hundred lashes, whereas, a married person for the same crime will be stoned to death.

Theft, if definitely established, deprives the thief of his hand, the court must sanction its amputation. Similarly, there are punishments for slander and drinking. The crimes for which Islam has prescribed limits or ordained Qisas are so serious in nature that even if man survives their perpetration, it shamefully drags into mire his honour and prestige in society. For these crimes non-acceptance of the evidence of women is apparently because of their peculiar nature and importance. Woman is the organizer and manager of her home. She has an intellect and temperament of her own and is brought up and educated and trained in a particular (purely domestic) atmosphere. She seldom gets exposure to those conditions and causes responsible for these heinous crimes. Therefore, her knowledge and observations about them cannot be as perfect as of a man, who is mostly in the world outside. Again, for a woman, due to her mild temper and greater sensitivity, it is not easy to keep in mind all the major and minor details of the individual and collective crimes of murder, theft, robbery and those related to sex (including rape), and put them up before the court exactly (without any omissions or additions). Her statement on these matters cannot satisfy the court to an extent equal to that of man, who is comparatively firm and strong. The aspect of uncertainties and wavering shall dominate in her statement. Islam insists that the court should not enforce these limits without firmly establishing the crime and should spare no effort in saving the accused from the punishment. The Prophet s.a.w. said:

ادرء وا الحدود عن المسلمين ما استطعتم

(ترمذی، ابواب الحدود، باب ماجاء فی درء الحدود)

"Keep away enforcement of penal laws from the believers as far as possible." (Tirmizi, Abwabul-Hudood,

Bab maja'a fi Dar'il Hudood. This tradition has been reported both as marfoo' and mauqoof. Imam Tirmizi has regarded mauqoof as in order (Admissible)

Another tradition records:

ادرء وا الحدود بالشبهات (نیل الاوطار: ۷/۲۷۲)

"In the presence of doubts try to avoid enforcement of penal laws." (This tradition is weak in authority but since it has been reported with several different authorities it can be safely taken for the sake of argument. Nail-ul-Autar : 7/272)

There may be some women whose observation can be regarded reliable even in the most formidable forms of murder, theft, robbery and criminal assault on women, and they may be capable of presenting their observations accurately before the court. However, this gender as a whole is not suited to this job (weak nerves, sentimentality, careless observation and taking of mental notes). Evidently, in pronouncing judgement, a few exceptional individuals cannot make the rule. A considerable majority or bulk of a kind (womankind) has to prove itself as capable and competent.

2. Evidence in Business Matters

Barring limits (hudood) and Qisas, in other judicial matters concerning rights and dealings, a woman's evidence is admissible. One reason for it is the exclusive importance of the limits and Qisas, not attached to other matters. Secondly, they relate to everyday life. Notwithstanding her limited sphere of activity, her home, she experiences these day-to-day common happenings around her. However, in face of her peculiar circumstances, and due to her frailties, Islamic law takes two preemptive measures. Firstly, it does not permit decision on any case on the evidence of woman alone, but with the evidence of either two men or one man and two women. The reason put forth by the Qur'an for replacement one man by two women is that it is possible for a woman to forget the details of some incident and in that case, the

other may remind her companion. Allah says:

وَاسْتَشْهِدُوْا شَهِيْدَيْنِ مِنْ رِّجَالِكُمْ ۚ فَاِنْ لَّمْ يَكُوْنَا رَجُلَيْنِ فَرَجُلٌ وَّامْرَاَتٰنِ مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَآءِ اَنْ تَضِلَّ اِحْدٰىهُمَا فَتُذَكِّرَ اِحْدٰىهُمَا الْاُخْرٰى ؕ (البقرہ:۲۸۲)

"And get two witnesses out of your own men. And if there are not two men, then a man and two women such as ye choose, for witnesses, so that if one of them errs, the other can remind her." - *Al Qur'an II: 282*

The verse may give an erroneous idea that, women witnesses are admissible only in case men are not available. However, this is far from the fact. It simply means that for evidence there should either be two men or one man and two women. Where woman is admissible as a witness, even in the presence of men, the Islamic court can summon one man and two women as witnesses for evidence. One of the inferences from the above verse is that women shall not submit statements in isolation. They will appear before the court together so that if one forgets any fact or some important detail, the other may remind her. (Fathul-Bari : 5/169)

The verse under reference occurs in connection with the rules, regulations, and ordainments of debts. The majority of the imams of jurisprudence, therefore, have consensus that in matters relating to debts and other dealings the evidence of women shall be admissible.

According to the Hanafite school of Fiqh, the evidence of one man and two women are not admissible only in matters relating to Hudood and Qisas. With this exception, in all other matters like, trade, debt, financial dealings, temporary loan of articles, monopoly, security, nikah, attroneyship, divorce, legacy, inheritance and other matters relating to rights and dealings, their evidence shall be admissible.

The argument supporting the above opinion, asserts that there are three credentials for evidence. First is the accuracy in the

observation of the incident. Second is the clear and careful record in mind of the observation. Third and final is the precision of their presentation, just as they were, neither less nor more. The infirmity of a woman as asserted by Qur'an is that she can forget the details and therefore, the corrective provided is two women together instead of one. So barring penal laws prescribed by Allah and Qisas or retaliatory punishments, in all other matters concerning human activities, woman's evidence shall be admissible. (Ibid. : 5/168)

Here a question arises that if the evidence of two women is equivalent to that of one man, then in matters requiring the evidence of two men for decision, the evidence of four women should be equally admissible. The jurists have answered it on the ground that though our intellect accepts it as reasonable, if permitted, it will enhance the movement of women outside their homes largely, whereas it is the considered plan of Shari'ah that their movements outside their houses should not be too frequent and free. (Hidayah : 3/154 with Sharooh Hidayah) (Perfect freedom of such frequent and unrestricted movements gives rise to evils and corruptions too dangerous to permit in Muslim society. They are before us in such a formidable form).

3. Evidence of Women in Matters Relating to Women Themselves

The Jurists are unanimous on the issue that the evidence of women is sufficient in all matters relating to themselves. For example, they can tender evidence that the newborn showed signs of life at birth. This evidence determines whether there should be a funeral prayer for the baby in case of its premature death. Besides, all other matters relating to inheritance which do not apply in case of still birth, or the evidence relating to a girl coming of age (majority in the juristic sense - commencement of the menstruation or confirmation of a woman's virginity or otherwise, or evidence in connection with the genital defects and diseases peculiar to women. All these matters have a bearing on nikah and

related matters.

(Jurists differ in some details but this has not been touched upon here)

In this connection, Imam Zahri says:

مضت السنة ان تجوز شهادة النساء فى مالا يطلع عليه غيرهن من ولادات النساء و عيوبهن

"The Sunnah or the usual practice has been that the evidence of a woman (alone) is permissible in matters where none else (men) can be conversant (due to strict restrictions), namely the condition of the infant at the time of delivery, (live or still-birth, or the physical defects of the female genitalia or development of secondary sex characters at puberty)."

'Abdullah ibn 'Umar, Sa'eed bin Musayyib and 'Urwah bin Zubair's r.a.a. sayings are available on this issue. It is reported about 'Ali r.a.a. that he decided a case on the evidence of a mid-wife. 'Umar r.a.a. is also reported to have accepted the evidence of a mid-wife about a live-birth.

(Ad-Deryat fi takhrije-Ahadithil-Hedayah : 295)

The opinion of jurists varies about the number of women whose evidence is essential in matters relating exclusively to women. Generally, four is the number accepted for such evidence to be effective and conclusive. Imam Malik and Ibn-e-Abi Laila say that the evidence of two women is sufficient to make decisions. Imam Thauri and the Hanafite School regard the isolated evidence of one woman sufficient for legal purposes.

(Fathul-Bari : 5/168-169)

The Hanafite School has offered two arguments in support of their opinion. Firstly, that the number has not been touched upon in the report (quoted above), and hence one woman's evidence should suffice. The second argument is that the exclusive evidence of women is enough in matters related to women alone, and men's evidence was not necessary for the simple reason that it is more undesirable for a man to see the private parts of a woman than for

a woman to see them. On this basis, one may assert that it is equally undesirable for more than one woman to see the secret parts of another woman. However, in spite of this, precaution demands furnishing evidence by more women than one.

(Hidayah : 3/154. To understand the Islamic point of view on the issue of women's evidence in detail, see the writer's book. 'Aurat-Islami Ma'ashire-men' Urdu)

Chapter 16

Woman and Political Leadership

Woman cannot be head of Islamic State

The Messenger of Allah s.a.w. has said:

لن يفلح قوم ولّوا امرهم امرأة

(بخاری، کتاب المغازی، باب کتاب النبیؐ الی کسریٰ وقیصر۔ ترمذی، ابواب الفتن)

"The people who entrust their collective affairs to a woman can never prosper." (Bukhari, Kitabul-Maghazi, bab Kitabun-Nabi ila Kisra (Khusro) wa Qaisar (Ceasar), Tirmizi, Abwabul Fitan)

The correct and appropriate deduction from this observation is that a woman cannot become the head of an Islamic State. Therefore, it is imperative for a nation to abstain from some move or step that is not conducive to its well-being and is sure to land it in troubles and tribulations.

Reasoning from Leadership in Prayer

This stand of Islam finds support from another aspect too - drawing analogy for the major leadership (of the Islamic state) from the minor leadership (of the congregational prayer). Therefore, we find that the Apostle of Allah s.a.w., on his deathbed, had stressed that Abu Bakr r.a.a. should lead the prayer, and they (the companions) in turn had inferred from it that he (Abu Bakr) was the most capable person to head the then Islamic state.

The majority of the *ummah* is unanimous on it that a woman cannot lead men in congregational prayer.

(According to Imam Shafi'i, only a woman can lead an exclusive congregation of women. Abu Thaur and Tabri have permitted it unconditionally, meaning thereby that she can lead men in a congregation. But as Ibn Rushd has remarked, it is a rare opinion, not shared by any one else. Bidayatul-Mujtahid : 1/148-149)

That means that she is even less suited as a priority for leadership of men - heading the Islamic state.

Does it amount to Prejudice Against Woman?

The objection levelled against it is that prejudice is at work in this view and it is an attempt to keep her out of the affairs of the collective life.

Responsibilities of the Head of an Islamic State

It is important to keep carefully in mind that in an Islamic state the position of the head of the state is not like that of the British monarch, a figurehead. The chief executive in the Islamic State is both a de jure and de facto Head, responsible and accountable in all state matters.

An authentic tradition reports that the Apostle of Allah s.a.w. said:

امام الذی علی الناس راع وهو مسئول عن رعیته

(بخاری، کتاب الاعتصام، باب قول اللہ واطیعوا...الخ)

"Imam (leader and head of the Islamic state) who leads them is their protector and supervisor of their affairs (in all matters spiritual and temporal) and he will be called to account for all those under his care."

(Bukhari, Kitabul E'atisam, bab Qaulallah Wa ati'u... (verse)

Our 'Ulama record, "a head is a must for an Islamic state to enforce the Islamic Shari'ah in the land. It includes establishing the divine limits (hudood), defending the country against the foreign invaders, equitably distributing the spoils of wars, managing the economic affairs, preventing seditions and breach of peace, establishing an order of justice and equity at all cost, trying to solve the problems of have-nots and the helpless, and being like one of them among his people.

They assert that such onerous responsibilities require the head of the state to be an extremely mature and conscientious

person and a man of wisdom and sagacity. One who is capable of taking quick decision, and timely action (in an emergency), superior in intellect and having a deep knowledge of men and matters, is awesome and dominating, has very strong nerves, and a firm unshakable will, armed with knowledge and learning together with administrative capacity and valour. Experience has shown that one rarely meets with all these qualities of the mind and heart in any one man at a time, and a woman of these qualities is still more difficult to find.

It has also been considered essential for the head of the Islamic state that he should be contented with leading an existence at the level of the generality of his people, lead them in their Friday and Eid congregations, and head their Hajj pilgrimage. These things will keep him constantly in direct contact with the common people of the land over whom he has control. They may have easy access to him and he too must be directly aware of their circumstances. (For details see Sharah-e-Aqa'id Nasafi : 113-114)

Woman cannot Shoulder these Responsibilities

Woman observing the Islamic limits of the mode of her living cannot possibly take to public life, the natural demand of such a dignified responsible position being too much for her. In fact woman with her strength and capability, mode of thought, inclinations, sentiments and feelings, from any aspect whatsoever, cannot bear the burden of polity and its multifarious, delicate and crushing responsibilities.

Can She Shoulder Other Collective Responsibilities

Here it is necessary to keep in mind that this discussion deals only with heading a state, governing a political organization (Imamat-e-Kubra - the highest leadership) with its enormous responsibilities. Whether one can entrust her with those of a lower degree, (not so crushing) is a matter of contention among the

jurists. According to the Hanafite fiqh, she can be a Qazi (dispensing justice) in a court dealing with matters other than the divine limits and Qisas. Hidayah says:

يجوز قضاء المرأة فى كل شيء الّا فى الحدود والقصاص

(ہدایہ:۳/۱۴۰)

"Barring the divine limits and Qisas, it is permissible for a woman to dispense justice and decide cases."

(Hidayah : 3/140)

Similarly, one can entrust her with the responsibility of handling the affairs of Auqaf and patron of orphans and orphanages. (Durrul-Mukhtar with Raddul-Muhtar : 4/494)

Whoever gives serious thought to these details will have to concede that Islam neither meets out prejudicial treatment to the finer sex nor has been hard upon her, but ondowed her only with those responsibilities, which she can easily shoulder. It spares her from the crushing and backbreaking responsibilities. This is not injustice to her, but absolute justice.

(For greater details see the writer's book 'Aurat-Islami Ma'ashire men' (Urdu))

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